18/pt. 400-end/1989

code of federal regulations

Conservation of Power and Water Resources

18

PART 400 TO END

Revised as of April 1, 1989

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Conservation of Power and Water Resources

18

PART 400 TO END

Revised as of April 1, 1989

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Table of Contents

	Page
Explanation	v
Title 18:	
Chapter III—Delaware River Basin Commission	3
Chapter VI—Water Resources Council	55
Chapter VIII—Susquehanna River Basin Commission	107
Chapter XIII—Tennessee Valley Authority	125
Finding Aids:	
Table of CFR Titles and Chapters	259
Alphabetical List of Agencies Appearing in the CFR	275
Redesignation Table	283
Transferred Regulations-Tennessee Valley Authority—List of CFR Sections Affected	285
List of CFR Sections Affected	287

Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 18 CFR 401.0 *refers to Title 18, Part 401, section 0.*

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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MARTHA L. GIRARD
Acting Director,
Office of the Federal Register.

April 1, 1989.

THIS TITLE

Title 18—CONSERVATION OF POWER AND WATER RESOURCES is composed of four volumes. The first three volumes, Parts 1 to 149, Parts 150 to 279, and Parts 280 to 399 contain Chapter I, the current regulations of the Federal Energy Regulatory Commission, Department of Energy. The fourth volume, containing Part 400 to End, includes all current regulations issued by the Delaware River Basin Commission, the Water Resources Council, the Susquehanna River Basin Commission and the Tennessee Valley Authority, as of April 1, 1989.

The OMB control numbers for the Federal Energy Regulatory Commission, Department of Energy, appear in § 389.101 of Chapter I. For the convenience of the user, § 389.101 is reprinted in the Finding Aids section of the first and second volumes.

Redesignation Tables appear in the first and fourth volumes.

For this volume Miriam S. Braganca was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Ruth C. Pontius.

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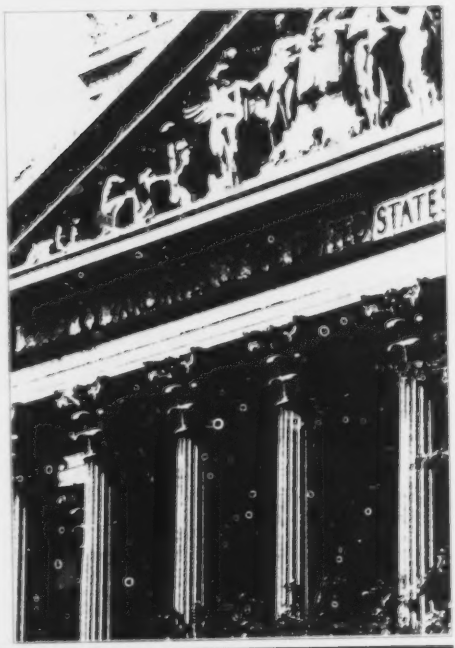

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Title 18—Conservation of Power and Water Resources

(This book contains Part 400 to End)

	Part
CHAPTER III—Delaware River Basin Commission	401
CHAPTER VI—Water Resources Council	701
CHAPTER VIII—Susquehanna River Basin Commission	801
CHAPTER XIII—Tennessee Valley Authority	1300

CROSS REFERENCES: Applications and entries conflicting with lands reserved or classified as power sites, or covered by power applications: See Public Lands, Interior, 43 CFR Part 2300, Subpart 2320.

Interstate Commerce Commission: See Transportation, 49 CFR Chapter X.

Irrigation projects; electrification, Bureau of Indian Affairs, Department of the Interior: See Indians, 25 CFR Parts 175—177.

Regulations of the Bureau of Land Management relating to rights-of-way for power, telephone, and telegraph purposes: See Public Lands, Interior, 43 CFR Part 2800.

Rights-of-way over Indian lands: See Indians, 25 CFR Parts 169, 170, and 265.

Securities and Exchange Commission: See Commodity and Securities Exchanges, 17 CFR Chapter II.

Withdrawal of public lands: See Public Lands, Interior, 43 CFR Part 2300.

CHAPTER III—DELAWARE RIVER BASIN COMMISSION

SUBCHAPTER A—ADMINISTRATIVE MANUAL

Part		Page
401	Rules of practice and procedure	4
410	Basin regulations; water code and administrative manual—Part III water quality regulations	33
415	Basin regulations—flood plain regulations	33
420	Basin regulations—water supply charges	41

SUBCHAPTER B—SPECIAL REGULATIONS

430	Ground water protection area: Pennsylvania	46

SUBCHAPTER A—ADMINISTRATIVE MANUAL

PART 401—RULES OF PRACTICE AND PROCEDURE

Sec.
401.0 Introduction.

Subpart A—Comprehensive Plan

401.1 Scope.
401.2 Concept of the Plan.
401.3 Other agencies.
401.4 Amendments and revisions.
401.5 Review of proposal.
401.6 Further action.
401.7 Public projects under Article 11 of the Compact.
401.8 Custody and availability.

Subpart B—Water Resources Program

401.21 Scope.
401.22 Concept of the Program.
401.23 Procedure.
401.24 Preparation and adoption.
401.25 Alternatives for public projects.
401.26 Inventory of other projects.

Subpart C—Project Review Under Section 3.8 of the Compact

401.31 Scope.
401.32 Concept of 3.8.
401.33 Administrative agreements.
401.34 Submission of project required.
401.35 Classification of projects for review under section 3.8 of the Compact.
401.36 Water pollution control projects—regional requirements.
401.37 Siting studies for major electric generation projects.
401.38 Water supply projects—conservation requirements.
401.39 Sequence of approval.
401.40 Form of referral by State or Federal agency.
401.41 Form of submission of projects not requiring prior approval by State or Federal agencies.
401.42 Preliminary action; informal conference; emergencies.
401.43 Hearings.
401.44 Objections.
401.45 Limitation of approval.
401.46 Certificate of compliance.

Subpart D—Preparation and Processing of Environmental Impact Statements

401.51 Scope.
401.52 Actions requiring an environmental report.
401.53 Applicant's environmental report.
401.54 Environmental assessment.
401.55 Negative declaration.
401.56 Actions requiring an environmental impact statement.
401.57 Lead agency.
401.58 Early notice.
401.59 Pre-draft consultation with appropriate agencies.
401.60 Draft environmental impact statement.
401.61 Processing the draft environmental impact statement.
401.62 Final environmental impact statement.
401.63 Public availability of statements.
401.64 Earliest date for Commission action.
401.65 Emergency circumstances.
401.66 Adequacy of draft and final environmental impact statements.
401.67 Procedure for commenting upon environmental impact statements.

Subpart E—Review in Water Quality Cases

401.71 Scope.
401.72 Notice and request for hearing.
401.73 Form of request.
401.74 Report.
401.75 Form and contents of report.
401.76 Protection of trade secrets; confidential information.
401.77 Failure to furnish report.
401.78 Informal conference.
401.79 Consolidation of hearings.

Subpart F—Conduct of Hearings

401.81 Hearings generally.
401.82 Hearing officer.
401.83 Hearing procedure.
401.84 Staff and other expert testimony.
401.85 Record of proceedings.
401.86 Assessment of costs.
401.87 Findings and report.
401.88 Action by the Commission.

Subpart G—Penalties and Settlements in Lieu of Penalties

401.91 Scope of subpart.
401.92 Notice to possible violators.
401.93 The record for decision-making.
401.94 Adjudicatory hearings.
401.95 Assessment of a penalty.
401.96 Factors to be applied in fixing penalty amount.
401.97 Enforcement of penalties.
401.98 Settlement by agreement in lieu of penalty.
401.99 Suspension or modification of penalty.

Sec.

Subpart H—Public Access to Records and Information

401.101 Policy on disclosure of Commission records.
401.102 Partial disclosure of records.
401.103 Request for existing records.
401.104 Preparation of new records.
401.105 Indexes of certain records.
401.106 FOIA Officer.
401.107 Permanent file of requests for Commission records.
401.108 Filing a request for records.
401.109 Time limitations.
401.110 Fees.
401.111 Waiver of fees.
401.112 Exempt information.
401.113 Segregable materials.
401.114 Data and information previously disclosed to the public.
401.115 Directionary disclosure by the Executive Director.
401.116 Disclosure to consultants, advisory committees, State and local government officials, and other special government employees.
401.117 Disclosure to other Federal government departments and agencies.
401.118 Disclosure in administrative or court proceedings.
401.119 Disclosure to Congress.

Subpart I—General Provisions

401.121 Definitions.
401.122 Supplementary details.
401.123 Waiver of rules.
401.124 Construction.

AUTHORITY: Delaware River Basin Compact (75 Stat. 688), unless otherwise noted.

SOURCE: 39 FR 25474, July 11, 1974, unless otherwise noted.

§ 401.0 Introduction.

(a) The regulations in this part govern the process whereby the Commission will include projects in the Comprehensive Plan and extend them into an annual Water Resources Program. Also set forth herein are the procedures and definitions that the Commission will use in screening projects proposed by others to test their compatibility with the Comprehensive Plan. An interrelationship among these three requirements is apparent in the Delaware River Basin Compact.

(b) Article 13 of the Compact calls for the adoption of the Comprehensive Plan and Water Resources Program. These documents are defined as follows:

(1) *Comprehensive Plan.* A plan that includes all public and private projects and facilities which are required in the judgment of the Commission for optimum planning, development, conservation, use, management, and control of the water resources of the Delaware Basin to meet present and future needs. The Comprehensive Plan is dynamic and will be periodically revised.

(2) *Water Resources Program.* An annual presentation, based upon the Comprehensive Plan, of the quantity and quality of water resources needs of the area to be served during the ensuing six years or for such reasonably foreseeable period as the Commission may determine, balanced by existing and proposed projects required to satisfy such needs, including all public and private projects to be anticipated, together with a separate statement of the projects proposed to be undertaken by the Commission during such period.

(c) To protect the integrity of the Comprehensive Plan and avoid conflicts of jurisdiction, the Compact provides generally, in Article 11, for cooperative planning of all public projects, and more specifically, in section 3.8 of the Compact, confers certain regulatory authority upon the Commission. Section 3.8 provides for a review of water resources projects to determine two matters: First, whether the project will have "a substantial effect on the water resources of the basin;" and secondly, whether a project having such an effect would "substantially impair or conflict with the Comprehensive Plan." The basic concept is thus both comprehensive and integrated planning and development.

(d) A project may enter the Comprehensive Plan in the discretion of the Commission whenever the project is ready for such action, both on its own merits and in relation to other projects which are part of the Plan. Subpart A of this part develops the concept of the Comprehensive Plan and the procedure to be followed for inclusion of new projects or modification of existing ones. The Water Resources Program represents a selection of projects by the Commission taken from the Comprehensive Plan. These are projects which the Commission

recommends for action during the ensuing six-year period. Procedures that the Commission will follow in developing the Water Resources Program are contained in Subpart B of this part.

(e) The regulatory power of the Commission under section 3.8 of the Compact extends to all public and private projects. However, since the Compact also provides for cooperative planning of public projects (Article 11), a special procedure to accelerate Commission approval of such projects is provided as part of the process of adoption of a Water Resources Program. As set forth in Subpart C of this part, the sponsor of a public project has a choice of routes for Commission approval: Where advance approval is necessary or desirable, the sponsor may secure approval through the process of project inclusion in the Water Resources Program; and this is an opportunity that will be available at a specified time each year. Where the sponsor may for any reason prefer the alternate course, the public project may be submitted for review under section 3.8 of the Compact. In brief, approval of a public project as ready for action within the Water Resources Program will have the effect of approval for purposes of section 3.8, but omission of a project from the Water Resources Program still leaves the door open for the project sponsor to proceed under section 3.8. Finally, under the regulations in this part private projects are required to proceed under section 3.8.

Subpart A—Comprehensive Plan

§ 401.1 Scope.

This subpart shall govern the submission, consideration and inclusion of projects into the Comprehensive Plan.

§ 401.2 Concept of the Plan.

(a) The Comprehensive Plan, as required in section 13.1 of the Compact, will provide for the immediate and long-range development and use of the water resources of the basin. The Plan will include all public and private projects and facilities which are required, in the judgment of the Commission, for the optimum planning, development, conservation, use, management and control of the water resources of the basin, in light of present and foreseeable future needs. It will consist of statements of policy, criteria and standards, as well as the principal physical projects, objectives and programs that will be involved in the development of the river basin.

(b) The Plan will be a body of documents expressing a systematic set of policies and programs for the future, and the means for carrying them out. It will be expressed through narrative text, maps, charts, schedules, budgets and other means.

(c) From time to time specific projects and facilities and programs may be incorporated, deleted, or modified to reflect changing conditions, research results and new technology. At any given time the degree of detail describing particular projects will vary depending upon the state of their development.

§ 401.3 Other agencies.

For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the Commission as a regional agency of the signatory parties to the Compact, Federal, State and local agencies shall follow the requirements of Article 11 of the Compact.

NOTE: As to Federal agencies, the Compact provides: "No expenditure or commitment shall be made for or on account of the construction, acquisition or operation of any project or facility nor shall it be deemed authorized, unless it shall have first been included by the Commission in the Comprehensive Plan."

As to State and local agencies, the Compact provides: "No expenditure or commitment shall be made for or on account of the construction, acquisition or operation of any project or facility unless it shall have first been included by the Commission in the Comprehensive Plan."

As to Federal, State and local agencies, the Compact provides: "The planning of all projects related to powers delegated to the Commission by this Compact shall be undertaken in consultation with the Commission * * *" Each * * * "agency otherwise authorized by law to plan, design, construct, operate or maintain any project or facility in or for the basin shall continue to have, exercise and discharge such authority except as specifically provided by this section."

§ 401.4 Amendments and revisions.

The Comprehensive Plan will be open, upon application of any interested party, for review and inclusion of new projects and for deletion or alteration of previously included projects. To this end, the Commission will receive and consider proposals for changes and additions to the Comprehensive Plan which may be submitted by any agency of the signatory parties, or any interested person, organization or group. Any such proposal shall be submitted in such form as may be required by the Executive Director to facilitate consideration by the Commission and shall include at least the following information:

(a) Purpose or purposes, including quantitative measures of physical benefits anticipated from the proposal.

(b) Approximate location, dimensions (if a structural project) and land area required.

(c) Draft or description of a proposed standard, policy or other non-structural measure.

(d) Forecast of the cost (if structural) or effect on the utilization of water resources (if a non-structural measure).

(e) Relation to other parts of the existing Comprehensive Plan.

(f) A description of the construction procedures to be followed in excavating, backfilling, retention of sediment, reseeding and landscaping, all with particular reference to minimizing soil erosion and sedimentation in the stream.

§ 401.5 Review of proposal.

Following staff study, examination and review of each proposal, the Commission will take such action on the proposal as may be appropriate, and will hold such public hearings thereon as are required by the Compact.

§ 401.6 Further action.

The Commission will review the Comprehensive Plan in its entirety at least once every six years from the date of the initial adoption of the Comprehensive Plan (Phase I, March 28, 1962). The amendments, additions and deletions will be compiled and the Plan as so revised will be republished annually.

§ 401.7 Public projects under Article 11 of the Compact.

(a) After a project of any Federal, State or local agency has been included in the Comprehensive Plan, no further action will be required by the Commission or by the agency to satisfy the requirements of Article 11 of the Compact, except as the Comprehensive Plan may be amended or revised pursuant to the Compact and these regulations. Any project which is changed substantially from the project as described in the Comprehensive Plan will be deemed to be a new and different project for the purposes of Article 11 of the Compact. Whenever a change is made the sponsor shall advise the Executive Director who will determine whether the change is deemed substantial within the meaning of the regulations in this part.

(b) Any project not having a substantial effect on the water resources of the basin, as defined in Subpart C of this part, may proceed without reference to Article 11 of the Compact.

§ 401.8 Custody and availability.

The Comprehensive Plan shall be and remain in the custody of the Executive Director. The Plan, including all maps, charts, descriptions and supporting data shall be and remain a public record open to examination during the regular business hours of the Commission, under such safeguards as the Executive Director may determine to be necessary to preserve and protect the Plan against loss, damage or destruction. Copies of the Comprehensive Plan or any part or parts thereof shall be made available by the Executive Director for public sale at a price covering the cost of production and distribution.

Subpart B—Water Resources Program

§ 401.21 Scope.

This subpart shall govern the submission, consideration and inclusion of projects into the Water Resources Program.

§ 401.22 Concept of the Program.

The Water Resources Program, as defined and described in section 13.2 of the Compact, will be a reasonably detailed amplification of that part of the Comprehensive Plan which the Commission recommends for action within the ensuing six-year period. That part of the Program consisting of a presentation of the water resources needs of the basin will be revised only at such intervals as may be indicated to reflect new findings and conclusions, based upon the Commission's continuing planning programs.

§ 401.23 Procedure.

Each project included in the Water Resources Program shall have been previously included in the Comprehensive Plan, except that a project may be added to both the Plan and the Program by concurrent action of the Commission. The project's sponsor shall furnish the following information prior to the inclusion of the project in the Water Resources Program:

(a) The Comprehensive Plan data brought up-to-date for the period of the Water Resources Program.

(b) Specific location and dimension of a structural project, and specific language of a standard, policy or other non-structural proposal.

(c) The plan of operation of a structural project.

(d) The specific effects of a non-structural project.

(e) Sufficient data to indicate a workable financial plan under which the project will be carried out.

(f) A timetable for implementation.

§ 401.24 Preparation and adoption.

The Water Resources Program will be prepared and considered by the Commission for adoption annually. Projects required to satisfy the basin needs during the period covered by the Program may be classified as follows:

(a) *"A" list.* This shall include public projects which require no further review, and inclusion in such list shall be deemed to be approved for the purposes of section 3.8 of the Compact.

(b) *"B" list.* This shall include public projects not included in the "A" list and privately sponsored projects which are proposed or anticipated by the Commission.

§ 401.25 Alternatives for public projects.

Any public project which has been included in the Comprehensive Plan but is not on the "A" list of the current Water Resources Program, at the option of the sponsor, may be submitted for review and approval under section 3.8 of the Compact in accordance with Subpart C of this part.

§ 401.26 Inventory of other projects.

Each Water Resources Program will include, for information purposes only, an inventory of projects approved during the previous year pursuant to section 3.8 of the Compact but which are not part of the Comprehensive Plan or Water Resources Program.

Subpart C—Project Review Under Section 3.8 of the Compact

§ 401.31 Scope.

This subpart shall govern the submission and review of projects under section 3.8 of the Delaware River Basin Compact.

§ 401.32 Concept of 3.8.

Section 3.8 is intended to protect and preserve the integrity of the Comprehensive Plan. This section of the Compact provides:

> No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the Commission, subject to the provisions of sections 3.3 and 3.5. The Commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the Comprehensive Plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such Plan. The Commission shall provide by regulation for the procedure of submission, review and consideration of projects, and for its determinations pursuant to this section. Any determination of the Commission hereunder shall be subject to judicial review in any court of competent jurisdiction.

§ 401.33 Administrative agreements.

The Executive Director is authorized and directed to enter into cooperative Administrative Agreements with Federal and State regulatory agencies concerned with the review of projects under Federal or State law as follows:

(a) To facilitate the submission and review of applications and the determinations required under section 3.8 of the Compact.

(b) To avoid unnecessary duplication of staff functions and hearings required by law.

(c) For such other and different purposes as he may deem feasible and advantageous for the administration of the Compact or any other law.

(d) Provided that any such Administrative Agreement shall be effective solely for purposes of intergovernmental cooperation and the failure of any applicant to comply with the provisions of any such agreement shall not prejudice his application or the consideration thereof.

§ 401.34 Submission of project required.

Any project which may have a substantial effect on the water resources of the basin, except as provided in paragraph (d) of this section, shall be submitted to the Commission for a determination as to whether the project will have a substantial effect on the water resources of the basin and, if so, whether the project impairs or conflicts with the Comprehensive Plan, as follows:

(a) Where the project is subject to review by a State or Federal agency which has entered into an Administrative Agreement with the Commission, such project will be referred to the Commission in accordance with the terms of the Administrative Agreement, and appropriate instructions will be prepared and issued by the Executive Director for guidance of project sponsors and applicants.

(b) Where no other State or Federal agency has jurisdiction to review and approve a project, or no Administrative Agreement is in force, the project sponsor shall apply directly to the Commission.

(c) Any project proposal which may have a substantial effect on the water resources of the basin may be received and reviewed by the staff informally in conference with the project sponsor during the preliminary planning phase to assist the sponsor to develop the project in accordance with the Commission's requirements.

(d) Whenever a project sponsored by one of the signatory parties, or by any agency, political subdivision or public corporation thereof, has been included in the Water Resources Program in the "A" list classification, the project, to the extent of such inclusion and as described in the Program, shall be deemed approval for the purposes of section 3.8 of the Compact.

(e) Whenever a project is subject to review and approval by the Commission under this section, there shall be no substantial construction activity thereon, including related preparation of land, unless and until the project has been approved by the Commission: *Provided, however,* That this prohibition shall not apply to the drilling of wells for purposes of obtaining geohydrologic data, nor to in-plant control and pretreatment facilities for pollution abatement.

§ 401.35 Classification of projects for review under section 3.8 of the Compact.

(a) Except as the Executive Director may specially direct by notice to the project owner or sponsor, or as a State or Federal agency may refer under paragraph (c) of this section, a project in any of the following classifications will be deemed not to have a substantial effect on the water resources of the basin and is not required to be submitted under section 3.8 of the compact:

(1) The construction of new impoundments or the enlargement or removal of existing impoundments, for whatever purpose, when the storage capacity is less than 100 million gallons.

(2) A withdrawal from ground water for any purpose when the daily average gross withdrawal during any calendar month does not exceed 100,000 gallons.

(3) A withdrawal from impoundments or running streams for any purpose when the daily average gross

withdrawal during any calendar month does not exceed 100,000 gallons.

(4) The construction of new municipal sewage treatment facilities or alteration or addition to existing municipal sewage treatment facilities when the design capacity of such facilities is less than a daily average rate of 50,000 gallons, and all local sewage collector systems and improvements discharging into authorized trunk sewage systems.

(5) The construction of new facilities or alteration or addition to existing facilities for the direct discharge to the surface or ground waters of industrial wastewater having design capacity of less than 50,000 gallons per day, except where such wastewater contains toxic concentrations of waste materials.

(6) A change in land cover on major ground water infiltration areas when the amount of land that would be altered is less than three square miles.

(7) Deepening, widening, cleaning or dredging existing stream beds or relocating any channel, and the placement of fill or construction of dikes, on streams within the basin except the Delaware River and tidal portions of tributaries thereto, and streams draining more than one state.

(8) Periodic maintenance dredging.

(9) Encroachments on streams within the basin caused by:

(i) Floating docks and anchorages and buoys and navigational aids.

(ii) Temporary construction such as causeways, cofferdams and falsework required to facilitate construction on permanent structures.

(10) Bridges and highways unless they would pass in or across an existing or proposed reservoir or recreation project areas shown in the Comprehensive Plan.

(11) Liquid petroleum products pipelines and appurtenances designed to operate under pressures less than 150 psi; local electric distribution lines and appurtenances; local communication lines and appurtenances; local natural and manufactured gas distribution lines and appurtenances; local water distribution lines and appurtenances; and local sanitary sewer mains, unless such lines would involve significant disturbance of ground cover affecting water resources.

(12) Electric transmission or bulk power system lines and appurtenances; major trunk communication lines and appurtenances; natural and manufactured gas transmission lines and appurtenances; major water transmission lines and appurtenances, unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as shown in the Comprehensive Plan, unless such lines would involve significant disturbance of ground cover affecting water resources.

(13) Liquid petroleum products pipelines and appurtenances designed to operate under pressures of more than 150 psi, unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as shown in the Comprehensive Plan, or in, on, under or across any stream within the basin, unless such lines would involve significant disturbance of ground cover affecting water resources.

(14) Landfill projects limited to disposal of solid inert wastes such as earth, rock, gravel, concrete, asphalt paving fragments, glass, plaster, plasterboard, rubber products, steel mill slag, clay, clay products, plastics, asbestos shingles, and similar materials, unless such projects are located on flood plains delineated by the Commission or a signatory State.

(15) Draining, filling, or otherwise altering marshes or wetlands when the area affected is less than 25 acres: *Provided, however,* That areas less than 25 acres shall be subject to Commission review and action (i) where neither a State nor a Federal level review and permit system is in effect, and the Executive Director determines that a project is of major regional or interstate significance requiring action by the Commission, or (ii) when a Commissioner or the Executive Director determines that the final action of a State or Federal permitting agency may not adequately reflect the Commission's policy as to wetlands of the basin. In the case of a project affecting less than 25 acres for which there has been issued a State or Federal permit, a determination to undertake

review and action by the Commission shall be made no later than 30 days following notification of the Commission of such permit action. The Executive Director, with the approval of the chairman, may at any time within the 30-day period inform any permitholder, signatory party, or other interested party that the Commission will decline to undertake review and action concerning any such project.

(b) All other projects which have or may have a substantial effect on the water resources of the basin shall be submitted to the Commission in accordance with the regulations in this part for determination as to whether the project will have a substantial effect on the water resources of the basin and, if so, whether the project impairs or conflicts with the Comprehensive Plan. Among these are projects involving the following (except as provided in paragraph (a) of this section):

(1) Impoundment of water.

(2) Withdrawal of ground water.

(3) Withdrawal of water from impoundment or streams.

(4) Diversion of water into or out of the basin.

(5) Deepening or widening of existing stream beds, channels, anchorages, harbors or turning basins, or the construction of new or enlarged channels, anchorages, harbors or turning basins, or the dredging of the bed of any stream or lake and disposal of the dredged spoil, when the nature or location of the project would affect the quantity or quality of ground or surface waters, or fish and wildlife habitat.

(6) Discharge of pollutants into waters of the basin.

(7) Facilities designed to intercept and transport sewage to a common point of discharge; and pipelines and electric power and communication lines.

(8) Facilities for the direct discharge to surface or ground waters of industrial wastewater.

(9) Projects that substantially encroach upon the stream or upon the 100-year flood plain of the Delaware River or its tributaries.

(10) Change in land cover on major groundwater infiltration areas.

(11) Hydroelectric power projects, including pumped storage projects.

(12) Projects or facilities of Federal, State and local agencies such as highways, buildings and other public works and improvements, affecting the water and related land resources of the basin.

(13) Draining, filling or otherwise altering marshes or wetlands.

(14) Regional wastewater treatment plans developed pursuant to the Federal Water Pollution Control Act.

(15) State and local standards of flood plain regulation.

(c) Whenever a State or Federal agency determines that a project falling within an excluded classification (as defined in paragraph (a) of this section) may have a substantial effect on the water resources of the basin, such project may be referred by the State or Federal agency to the Commission for action under the regulations in this part.

(d) Except as otherwise provided by § 401.40 the sponsor shall submit an application for review and approval of a project included under paragraph (b) of this section through the appropriate agency of a signatory party. Such agency will transmit the application or a summary thereof to the Executive Director, pursuant to Administrative Agreement, together with available supporting materials filed in accordance with the practice of the agency of the signatory party. The Executive Director will thereupon determine for the Commission whether or not the proposed project could have a substantial effect upon the water resources of the basin within the meaning of the Compact and the Rules of Practice and Procedure. In making such determination the Executive Director shall be guided by his findings as to the following factors:

(1) The impact of the project on environmentally sensitive land areas or species of plant or animal life.

(2) The potential of the project and its distribution or collection systems to induce significant changes in numbers, distribution or character of population or economic activity.

(3) The magnitude of proposed water withdrawal or waste discharge

in relation to minimum streamflow, aquifer yield or water quality.

(4) The size of the project and distribution or collection system and areal extent and duration of its environmental impact.

(5) The effect of the project on public health, safety or general welfare, and historic and cultural properties.

(6) The effect of the project on surface or groundwaters in another state.

(7) The effect of the project on transfers of water into or out of the basin or from one sub-basin to another.

(8) The cost of the project and nature and magnitude of resources required for its implementation.

(9) The effect of the project on flood flows and storm water runoff.

(10) Any other facts which in a particular case may be relevant to the protection of the integrity of the Comprehensive Plan.

(11) The impact of the project on aquatic life including fisheries.

(e) Projects determined by the Executive Director to have a substantial effect will be subject to approval by the Commission pursuant to section 3.8 and Article 11 of the Compact (to the extent applicable). Projects determined by the Executive Director not to have a substantial effect on the water resources of the basin will not be subject to further review or action by the Commission. The Executive Director shall notify the sponsor of the project, the agency of the signatory party reviewing the project, and the governing body of the municipality, and the planning board of the county in which the project is located of his initial determination on the question of substantial effect. Notice to such interested parties shall be given by certified mail, return receipt requested. The Executive Director shall also notify by regular mail all members of the Commission and of the Federal Field Committee. He shall also cause to be published in a newspaper of general circulation in that municipality, at least once, a notice of such determination. If no objection is made to the Executive Director's initial determination, it shall become final ten days after publication as above. Any interested party objecting to the determination may, within ten days of the newspaper publication, object to such determination and appeal to the Executive Director by letter for reconsideration. Following such reconsideration, if requested, the Executive Director shall serve notice upon the agency of the signatory party, the applicant and each such objector of his final determination. Any such party may appeal such final determination to the Commission by notice in writing served upon the Executive Director within 14 days after the service of the Executive Director's decision upon reconsideration. The Commission will determine such appeal at a regular meeting thereafter.

[39 FR 25474, July 11, 1974, as amended at 42 FR 15311, Mar. 21, 1977; 43 FR 38816, Aug. 31, 1978]

§ 401.36 Water pollution control projects—regional requirements.

(a) The use of regional solutions to water pollution problems, with the least number of separate treatment plants which may be efficient in the particular circumstance, is required whenever feasible. Each waste treatment project shall be submitted to the Commission not later than the completion of preliminary engineering for review of its compliance with this and other requirements of the Comprehensive Plan.

(b) In reviewing a project for compliance with this section, the Commission will consider the following matters, comparing regional versus separate treatment systems:

(1) Construction costs and economies of various scales of development.

(2) Operating costs and economies of various scales of operation.

(3) Capability of handling industrial wastes with and without pretreatment.

(4) Capability to assimilate high peak flows and temporary shock loads or emergency conditions.

(5) Space and facilities for sludge disposal.

(6) Personnel skills required and their availability for operation and supervision.

(7) Capacity to absorb growth, and the relative times required to place a separate and a regional system in operation.

(8) Desirability of the site selection alternatives for the treatment plant in view of considerations of efficiency of land use, potential service area and relative transmission distances.

(9) The effect for a reasonable distance downstream on the quality of the receiving waters.

(10) Effectiveness of the proposal in identifying all sources of pollution and in achieving a coordinated, comprehensive and orderly plan for abatement of pollution in the region.

(c) A preliminary engineering report shall accompany each application and shall include factual findings and conclusions with respect to paragraphs (b)(1) through (8) of this section.

(d) For the purpose of the regulations in this part, a "region" is defined to mean one or more drainage areas or parts thereof. A "regional solution" is one which is based upon a feasibility study of the region for which a single system of sewage collection and treatment would be physically and economically feasible.

§ 401.37 Siting studies for major electric generation projects.

(a) An application under section 3.8 of the Compact for approval of an electric generating project with a design capacity of 100,000 KW or more shall include as part of the application: (1) A master siting study, (2) a site selection analysis for the project, and (3) the environmental statement otherwise required.

(b)(1) The master siting study shall describe in general terms all existing major electric generating projects of the applicant and of other public utilities using the water resources of the basin, and all such projects proposed or planned for the ensuing 15-year period. The master siting study shall describe particularly the impact of each proposed project on the water resources and related land resources of the basin. It shall include, with as much detail as is available, a description of the five-mile reach of any stream within which each proposed project is or will be located, the concept, capacity and fuel source of each project, the quantity and method of heat and moisture dissipation, the water resource requirements and water-related ecological effects of each proposed project in the study.

(2) The master siting study will be reviewed by the Commission in relation to the Comprehensive Plan, may be employed as an input to the Comprehensive Plan, and may be considered, in whole or in part, for inclusion in the Plan. A master siting study may be amended from time to time to reflect changing power demands, technology and water resource conditions. The Commission will act in relation to a master siting study or amendment thereof only after public hearing.

(c) The site selection analysis shall demonstrate the relationship of the proposed project, and its specific location, to the master siting study. Prior to submitting the site selection analysis, the applicant shall circulate it for comment among other interested public utilities, the Federal and State governmental agencies having jurisdiction over the siting of electric generating stations in the State in which the project is located, regional or county planning commissions having jurisdiction in the project area, and such major water users as the Commission shall designate, and such comments shall be appended to and submitted together with the application. Prior to acting on the application, the Commission will make the site selection analysis available for public review and comment.

(d) The Commission will review each application for a major electric generating project with reference to the doctrine of equitable apportionment, including such priority of uses as will recognize alternative water resources

and sites for electric generating projects, the increasing demands on the water resources of the basin and the optimum beneficial use of the water resources of the basin.

(e) The Commission will not act upon an application for approval under section 3.8 of the Compact to initiate a partial or preliminary phase of an electric generating project which is subject to the regulations in this part unless the application conforms to requirements of paragraph (a) of this section.

§ 401.38 Water supply projects—conservation requirements.

Maximum feasible efficiency in the use of water is required on the part of water users throughout the basin. Effective September 1, 1981 applications under section 3.8 of the Compact for new water withdrawals subject to review by the Commission shall include and describe water conserving practices and technology designed to minimize the use of water by municipal, industrial and agricultural users, as provided in this section.

(a) Applications for approval of new withdrawals from surface or ground water sources submitted by a municipality, public authority or private water works corporation whose total average withdrawals exceed one million gallons per day shall include or be in reference to a program prepared by the applicant consisting of the following elements:

(1) Periodic monitoring of water distribution and use, and establishment of a systematic leak detection and control program;

(2) Use of the best practicable water conserving devices and procedures by all classes of users in new construction or installations, and provision of information to all classes of existing users concerning the availability of water conserving devices and procedures;

(3) A contingency plan including use priorities and emergency conservation measures to be instituted in the event of a drought or other water shortage condition. Contingency plans of public authorities or private water works corporations shall be prepared in cooperation with, and made available to, all municipalities in the area affected by the contingency plan, and shall be coordinated with any applicable statewide water shortage contingency plans.

(b) Programs prepared pursuant to paragraph (a) of this section shall be subject to any applicable limitations of public utility regulations of the signatory party in which the project is located.

(c) Applications for approval of new industrial or commercial water withdrawals from surface or ground water sources in excess of an average of one million gallons per day shall contain (1) a report of the water conserving procedures and technology considered by the applicant, and the extent to which they will be applied in the development of the project; and (2) a contingency plan including emergency conservation measures to be instituted in the event of a drought or other water shortage. The report and contingency plan estimate the impact of the water conservation measures upon consumptive and non-consumptive water use by the applicant.

(d) Applications for approval of new agricultural irrigation water withdrawals from surface or ground water sources in excess of one million gallons per day shall include a statement of the operating procedure or equipment to be used by the applicant to achieve the most efficient method of application of water and to avoid waste.

(e) Reports, programs and contingency plans required under this section shall be submitted by the applicant as part of the permit application to the state agency having jurisdiction over the project, or directly to the Commission in those cases where the project is not subject to the jurisdiction of a state agency. State agencies having jurisdiction over a project that is subject to the provisions of this section shall determine the adequacy and completeness of the applicant's compliance with these requirements and shall advise the Commission of their findings and conclusions.

[46 FR 25439, May 7, 1981]

§ 401.39 Sequence of approval.

A project will be considered by the Commission under section 3.8 of the

Compact either before or after any other State or Federal review, in accordance with the provisions of the Administrative Agreement applicable to such project.

[39 FR 25474, July 11, 1974. Redesignated at 46 FR 25439, May 7, 1981]

§ 401.40 Form of referral by State or Federal agency.

Upon approval by any State or Federal agency of any project reviewable by the Commission under this part, if the project has not prior thereto been reviewed and approved by the Commission, such agency shall refer the project for review under section 3.8 of the Compact in such form and manner as shall be provided by Administrative Agreement.

[39 FR 25474, July 11, 1974. Redesignated at 46 FR 25439, May 7, 1981]

§ 401.41 Form of submission of projects not requiring prior approval by State or Federal agencies.

Where a project does not require approval by any other State or Federal agency, or where such approval is required but an Administrative Agreement is not in force, the project shall be submitted directly to the Commission for review and determination of compatibility with the Comprehensive Plan, in such form of application, with such supporting documentation, as the Executive Director may reasonably require for the administration of the provisions of the Compact. These shall include without limitation thereto:

(a) *Exhibits to accompany application.* The application shall be accompanied by the following exhibits:

(1) Abstract of proceedings authorizing project, where applicable.

(2) General map showing specific location and dimension of a structural project, or specific language of a standard or policy in the case of a non-structural proposal.

(3) Section of the United States Geological Survey topographic map showing the territory and watershed affected.

(4) Maps, drawings, specifications and profiles of any proposed structures, or a description of the specific effects of a non-structural project.

(5) Written report of the applicant's engineer showing the proposed plan of operation of a structural project.

(6) Map of any lands to be acquired or occupied.

(7) Estimate of the cost of completing the proposed project, and sufficient data to indicate a workable financial plan under which the project will be carried out.

(8) A description of the construction procedures to be followed in excavating, backfilling, retention of sediment, reseeding and landscaping, all with particular reference to minimizing soil erosion and sedimentation in the stream.

(b) *Letter of transmittal.* The application shall be accompanied by a letter of transmittal in which the applicant shall include a list of all enclosures, the names and addresses to which communications may be directed to the applicant, and the names and addreses of the applicant's engineer and counsel, if any.

(c) *Number of copies.* Unless otherwise ordered by the Commission, two copies of the application and accompanying papers shall be filed. If any application is contested, the Commission may require additional copies of the application and all accompanying papers to be furnished by the applicant. In such cases, certified copies or photographic prints or reproductions may be used.

[39 FR 25474, July 11, 1974. Redesignated at 46 FR 25439, May 7, 1981]

§ 401.42 Preliminary action; informal conference; emergencies.

(a) Whenever the Executive Director shall deem necessary, or upon request of the applicant, an informal confer-

ence may be scheduled to explain, supplement or review an application.

(b) The appropriate agency of a signatory party shall perform a technical review for the Commission, in accordance with Administrative Agreement, of each project finally determined to have a substantial effect on the water resources of the basin; except that the Commission staff will perform the technical review: (1) Whenever the agency of the signatory party is itself the sponsor, or (2) whenever the agency of the signatory party does not have the necessary regulatory jurisdiction, or (3) upon request of the agency of the signatory party; and (4) as to those projects which are subject to an environmental assessment or environmental impact statement under these Rules of Practice and Procedure and the National Environmental Policy Act.

(c) Upon completion of its technical review, the agency of the signatory party shall, in accordance with Administrative Agreement, prepare and file with the Executive Director an action report with respect to the project. The Executive Director shall prepare a memorandum of comment stating his concurrence or nonconcurrence with the findings and recommendations of the action report. The report, memorandum, and a proposed docket decision with reference thereto shall be placed before the Commission by the Executive Director at its next regular meeting. Whenever time permits, a copy of the proposed docket decision shall be furnished to the applicant, and the applicant shall be given an opportunity to comment thereon and to consent to the conditions stated therein, before action by the Commission. The Commission will act upon the project in accordance with Section 3.8 and Article 11 of the Compact (to the extent applicable).

(d) In the event of an emergency requiring immediate action to protect the public interest or to avoid substantial and irreparable injury to any private person or property, and the circumstances do not permit a review, hearing and determination in the regular course of the regulations in this part, the Executive Director with the approval of the chairman of the Commission may issue an emergency certificate authorizing an applicant to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review, hearing and determination by the Commission as otherwise required in this part.

[39 FR 25474, July 11, 1974, as amended at 42 FR 15311, Mar. 21, 1977. Redesignated at 46 FR 25439, May 7, 1981]

§ 401.43 Hearings.

(a) The Executive Director may, and whenever any substantial objection is filed pursuant to this section shall, cause a hearing to be scheduled upon an application received under § 401.41. He may, and at the request of the applicant shall, cause a hearing to be scheduled as to any application referred under § 401.40. Notice of the intention of the Commission to act upon an application received pursuant to § 401.41, or upon a request for a hearing with regard to an application received pursuant to § 401.40, shall be published by the Executive Director in one or more newspapers of general circulation in the area affected, at least once a week for two successive weeks, which publications shall not be less than seven nor more than 21 days prior to the date on which action is proposed to be taken. Such notice shall direct any person objecting to the application to file his objection with the Commission not later than two days before the scheduled date of action. If the Executive Director determines that any filed objection is substantial, he shall defer consideration by the Commission, furnish a copy of each such objection to the applicant, and schedule a hearing on the application to be held not less than ten nor more than 30 days after the last day for filing objections. Notice of the hearing shall be served forthwith by certified mail upon the applicant and each person filing a substantial objection. Proof of such publication and of service of notice shall be filed with the Commission on or before the date for which the hearing is scheduled.

(b) The application and supporting documents, maps and data, as filed or amended shall be open to inspection

by any interested person prior to the hearing.

[39 FR 25474, July 11, 1974. Redesignated at 46 FR 25439, May 7, 1981]

§ 401.44 Objections.

Every objection filed pursuant to § 401.43 shall be in writing and shall particularly specify the ground thereof. Amendments to the objections may be permitted by the Commission. All objections and supporting documents shall be filed in duplicate in such form as the Executive Director may prescribe. No person may be heard in opposition to an application except on objections so filed. Such objections shall be heard and determined under the procedure prescribed by Subpart F, Hearings.

[39 FR 25474, July 11, 1974. Redesignated at 46 FR 25439, May 7, 1981]

§ 401.45 Limitation of approval.

Approval by the Commission under this part shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval. An approval may be extended or renewed by the Commission upon application.

[39 FR 25474, July 11, 1974. Redesignated at 46 FR 25439, May 7, 1981]

§ 401.46 Certificate of compliance.

The Executive Director, upon application duly made to him, and after appropriate inspection and such other proof as may be required, may certify to any applicant that the applicant has duly complied with the requirements of any action or determination by the Commission pursuant to this part. The Executive Director may make such certification whenever he finds and determines that there has been sufficient compliance to satisfy the purposes and objectives of the Commission's action or determination notwithstanding the existence of any technical variation or omission in the work done. All such certifications shall be reported to the Commission at its next meeting thereafter.

[39 FR 25474, July 11, 1974. Redesignated at 46 FR 25439, May 7, 1981]

Subpart D—Preparation and Processing of Environmental Impact Statements

§ 401.51 Scope.

(a) *Purpose.* The National Environmental Policy Act of 1969 implemented by Executive Order 11514, mandates that all Federal agencies, to the fullest extent possible, direct their policies, plans and programs so as to meet national environmental goals. Section 105 of the Act provides that "The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies." Section 102(2)(C) of the Act and the Council on Environmental Quality's Guidelines of April 23, 1971, (36 FR 7724) require that all Federal agencies prepare environmental statements on all major Federal actions significantly affecting the quality of the human environment. The objective of the Act is to build into the agency decision-making process, beginning at the earliest possible point, an appropriate and careful consideration of the environmental aspects of proposed actions and to assist agencies in implementing the policies as well as the letter of the Act.

(b) *Policy.* The Delaware River Basin Commission will, in consultation with other appropriate Federal, State and local agencies and the public, assess the environmental impacts of any proposed action concurrent with initial technical and economic studies in order that adverse effects will be avoided, and environmental quality will be maintained, restored or enhanced, to the fullest extent practicable. In particular, alternative actions

that will minimize adverse impacts will be explored and both the long and short-range implications to man, his physical and social surroundings, and to nature, will be evaluated in order to avoid, to the fullest extent practicable, undesirable consequences as they relate to the quality of the human environment. This assessment shall take place as early as possible and in all cases prior to any decision that may significantly affect the environment and, where required, a draft environmental impact statement will be prepared and circulated in accordance with the regulations in this part.

(c) *Definitions.* "Action" is a resolution by the Commission approving, disapproving, modifying or otherwise disposing of a project, program, legislation or any part thereof.

"Applicant" is proposed action's sponsor, including the Commission when it sponsors an action.

"Environment" for the purposes of the regulations in this part is the major natural, man-made or affected environment as implied by the National Environmental Policy Act of 1969.

"Environmental assessment" is an analysis by the Commission prior to the preparation of an environmental impact statement, of an applicant's environmental report or of a Commission-sponsored action to determine whether the action proposed will have a significant effect involving the quality of the human environment.

"Environmental impact statement" is a document prepared by the Commission which identifies and analyzes in detail the environmental impacts of a major action by the Commission having significant effects involving the quality of the human environment.

"Environmental report" is a document to be submitted by applicants proposing an action which requires an environmental assessment.

"Negative declaration" is a determination by the Executive Director, based upon an environmental assessment, that a proposed action will not require an environmental impact statement.

"Notice of intent" is an announcement to other Federal, State and local agencies and to the public that the Commission will be preparing an environmental impact statement for a given action.

"Responsible official" is the Executive Director or his designee of the Delaware River Basin Commission.

"Significant effect" is that degree of impact upon the quality of the human environment determined by the Commission or the Executive Director as sufficient to justify an environmental impact statement.

§ 401.52 Actions requiring an environmental report.

The applicant for any action within the following classifications shall submit not later than the completion of preliminary engineering or feasibility studies, an environmental report.

(a) All action required by the regulations in this part to include an environmental impact statement.

(b) Major actions the Commission may wish to initiate.

(c) Action to include in the Commission's Comprehensive Plan the following:

(1) Major policy or regulations significantly affecting the quality of the human environment.

(2) Master plans including a sequence of the contemplated projects which together may have a significant effect upon the quality of the human environment.

(d) When requested by the Executive Director based upon an environmental review of the action.

§ 401.53 Applicant's environmental report.

Upon receipt of the report, the Executive Director shall prepare an environmental assessment of the action. Additional information, studies, maps, etc., may be requested from the applicant. The environmental assessment will be the basis for the determination of the need for an environmental impact statement. A supplemental guideline covering the substantive contents of an environmental report will be made available to all applicants. In brief, an environmental report will include the following:

(a) A description of the proposed action, including the decision-making process, discussing alternatives to il-

lustrate why the proposed action was chosen.

(b) A description of the existing environmental setting without the proposed action.

(c) The probable anticipated environmental impact primary and secondary, including both beneficial and unavoidable adverse effects from the proposed action and the basis for the conclusion. Resources irreversibly and irretrievably committed should be identified.

(d) All reasonable alternatives to the proposed action that have been considered including that of no action.

(e) An evaluation of environmental benefits, costs and risks, including short-term uses versus long-term productivity, weighing the proposed action and the alternatives considered against the quality of the human environment.

(f) Any other information, data, maps, charts, etc., which may be requested by the Commission for use in their analysis of the proposed action.

§ 401.54 Environmental assessment.

An environmental review will be made for those actions requiring an environmental report. The assessment is made to identify and evaluate the expected and potential environmental impacts of the action and the alternatives considered. The assessment will determine whether significant impact upon the environment can be anticipated from the proposed action. The results of an environmental assessment will be either the preparation of the environmental impact statement or a negative declaration. The contents of an environmental assessment will include the following:

(a) Description of the project.

(b) Analysis of significant impacts.

(c) Summation of any objections.

(d) Agencies consulted and their concerns, if any, including interested State, regional, county and local agencies. The Environmental Protection Agency will be consulted in all instances.

(e) Conclusions.

§ 401.55 Negative declaration.

(a) A negative declaration may be issued by the Executive Director prior to taking any official action on a project which, as a result of an environmental assessment (§ 401.54), has been determined will not cause significant environmental impacts. The assessment will become a part of the project's records and be available for public inspection.

(b) Prior to the issuance of a negative declartion, the Executive Director shall publish notice of his intent to do so unless good cause to proceed with an environmental impact statement is submitted in writing by any interested person or agency within 15 days from the date of the notice publication.

(c) The negative declaration will include the environmental assessment, copies of any relevant correspondence and the official determination by the Executive Director that the proposed action is not a major action significantly affecting the quality of the human environment.

(d) Once a negative declaration has been made, the proposed project may immediately proceed to Commission action.

(e) When a negative declaration has been made for a proposed action ordinarily requiring the preparation of an environmental impact statement under the provisions of § 401.56, the declaration, complete with the environmental assessment, will be made available to the public.

§ 401.56 Actions requiring an environmental impact statement.

The list of general classifications which require an environmental impact statement is based upon the reviewable projects activity of the Commission. These actions have been identified by an analysis of environmental impacts typically associated with the principal types of Commission action. Where an environmental impact statement is prepared for a master plan or program having a chain of contemplated projects, subsequent statements on major components will be required only where significant impacts were not adequately evaluated in the overview statement relating to the total plan or program. Inclusion of the action in the Comprehensive Plan prior to January 1, 1970, does not

exempt the action from an environmental impact statement. Actions identified as requiring an environmental impact statement include the following:

(a) Any project, plan, regulation or policy identified via the process of an environmental assessment as having significant effect upon the quality of the human environment.

(b) Major large-scale programs or master plans involving a sequence of contemplated projects including new towns, watershed programs, wastewater and water supply plans and recreation plans.

(c) Impoundments.

(d) Diversions.

(e) Fossil-fueled electric generating stations.

(f) Liquid petroleum products pipelines.

(g) Draining or filling or otherwise altering marshes or wetlands.

(h) Substantial encroachments upon a stream or upon the 100-year flood plain of the Delaware River or its tributaries.

(i) Any other action which the Executive Director, in his discretion, determines is a major action which may have a significant effect upon the quality of human environment and/or environmental impact which is substantially controversial.

§ 401.57 Lead agency.

The Executive Director shall review the proposed action with other Federal agencies to determine whether DRBC should be lead agency for the preparation of the environmental impact statement. Cooperative and/or joint agency efforts will be taken whenever practicable. When any action requiring an environmental impact statement under the regulations in this part is also required to have an environmental impact statement by regulations of another Federal agency, the Executive Director will consult with such agency and establish appropriate lead agency arrangements that will meet the requirements of the National Environmental Policy Act and the revised (June 1973) Council on Environmental Quality Guidelines, to avoid duplication. If another Federal agency, in its role as lead agency, has determined that, after an environmental assessment, any project listed in the regulations in this part does not require an environmental impact statement, the Executive Director shall request from the lead agency a letter to that effect and after a review of the project may exempt the project from this section.

§ 401.58 Early notice.

Once the determination has been made that a project requires an environmental impact statement, a public announcement, hereinafter called Notice of Intent, shall be issued to the Council on Environmental Quality, appropriate Federal, State and municipal agencies, and be publicly posted in the Commission headquarters. The Notice of Intent shall also be sent to citizens and citizens organizations identified as having an interest in the project. The Notice of Intent shall define the Commission as lead agency and request comments which may be helpful in the preparation of the draft statement. A current list of administrative actions for which environmental impact statements is being prepared and will be available for public inspection upon request.

§ 401.59 Pre-draft consultation with appropriate agencies.

(a) *Consultation with Federal agencies.* When the Commission is considering an action requiring an environmental impact statement, it will, prior to the preparation of the draft statement, consult with Federal agencies having jurisdiction over reasonable alternatives to the proposed action or jurisdiction by law or special expertise with respect to the environmental impacts of the proposed action and reasonable alternatives.

(b) *Consultation with State and local agencies.* In every case in which implementation of the proposed action or its reasonable alternatives would require exercise of authority by a State or local agency, that agency will be consulted prior to the preparation of the draft statement. Use will be made of the State and local A-95 clearinghouses.

§ 401.60 Draft environmental impact statement.

The Executive Director shall prepare a substantive draft environmental impact statement as soon as practicable after the decision that the statement is necessary. Where a plan or program has been developed, the relationship between the plan and the subsequent projects or phases encompassed by it shall be evaluated to determine the preferable and most meaningful point in time for preparing a statement. Where practicable the statement will be drafted for the total program at the completion of the overall planning stage. Individual actions included in the plan will not require separate statements except where significant change has occurred. A supplemental statement will be issued covering only that change. The discussion of alternatives to the proposed action and their impact on the environment will accompany the proposed action through the Commission's entire review process. Generally the content of an environmental impact statement will include the following: (Substantive description of the content is available in supplemental guidelines upon request).

(a) Summary.

(b) Description of the proposed action, statement of its purpose and its components in detail commensurate for an assessment of potential environmental impact.

(c) A succinct description of the environmental setting without the proposed action.

(d) The relationship of the proposed action to water and land use plans, policies and controls for the affected area.

(e) The probable impact of the proposed action on the environment, beneficial and adverse, including secondary or indirect, as well as primary or direct, consequences.

(f) Any probable adverse environmental effects which cannot be avoided, summarizing those effects discussed in paragraph (e) of this section that are adverse and unavoidable.

(g) All reasonable alternatives to the proposed action that have been considered including that of no action, with an objective evaluation of the environmental impacts from each.

(h) An evaluation of the proposed action in relation to short-term use of man's environment and the maintenance and enhancement of long-term productivity.

(i) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented.

(j) An indication of other interests and considerations of Federal policy thought to offset the adverse environmental effects of the proposed action.

(k) When determined by the Executive Director as necessary, an evaluation of environmental benefits, costs and risks of the proposed action compared to the alternatives considered against the quality of the human environment.

§ 401.61 Processing the draft environmental impact statement.

(a) The Executive Director shall distribute ten copies of the draft environmental impact statement and two completed National Technical Information Service (NTIS) accession notice cards to the Council on Environmental Quality.

(b) The Executive Director shall announce to other agencies and the general public via the FEDERAL REGISTER and in accordance with other chapters and sections of the Administrative Manual, both the availability of the draft environmental impact statement and the date of a public hearing on environmental factors which will be held not less than 15 days after the draft environmental impact statement has been made available to the public.

(c) Concurrent with the announcement of availability, the Executive Director shall provide copies of the draft environmental impact statement to the Environmental Protection Agency and to appropriate field offices of reviewing Federal agencies that have special expertise or jurisdiction by law with respect to any impacts involved as listed in Appendix II of the Council on Environmental Quality's guidelines. At the same time, copies shall also be provided to the appropriate

State and local agencies and to interested organizations and persons.

(d) All comments made upon the draft environmental impact statement should be submitted to DRBC within 45 days after the date of publication in the FEDERAL REGISTER announcing the availability of the draft. Extensions of review time will be at the discretion of the Executive Director.

§ 401.62 Final environmental impact statement.

Following receipt of comments on the draft environmental impact statement and public hearing, the Executive Director shall prepare a final environmental impact statement responding to written and/or recorded suggestions, criticisms and comments raised through the review of the draft statement. Distribution will be to the Council on Environmental Quality, the Environmental Protection Agency and those who respond to the draft statement and to written requests.

§ 401.63 Public availability of statements.

All draft and final environmental impact statements, including comments received thereon, shall be available for public examination as per the Freedom of Information Act in the Commission's offices and such other offices as the Executive Director may designate.

§ 401.64 Earliest date for Commission action.

As directed by the Commission, the Executive Director will forward the final environmental impact statement to the Council on Environmental Quality. The Commission will act upon a project that is subject to the requirements of this section not less than 90 days after a draft environmental impact statement has been released for public comment and not less than 30 days (which may run concurrently within the 90 days) after the final environmental impact statement has been received by the Council on Environmental Quality. The Commission will include or refer to the environmental assessment or the environmental impact statement, and will make specific findings and conclusions with respect to the environmental effects of the project.

§ 401.65 Emergency circumstances.

In the event of emergency circumstances those projects requiring an environmental impact statement as provided for in § 401.42, the Executive Director will consult with the Council on Environmental Quality with respect to waiver, suspension or deferment of the requirements of this subpart before any action is taken.

§ 401.66 Adequacy of draft and final environmental impact statements.

The draft and final environmental impact statements will represent the Commission's independent evaluation of the environmental impacts of the action and the appropriate alternatives to the proposed action. Redraft statements will be prepared if, prior to the submission of a final statement to the Council on Environmental Quality, the original draft is inadequate because significant information relevant to the total action was omitted from the original draft or only came to light after circulation of the original draft. All redraft statements shall be circulated for comment in the same manner as original draft environmental impact statements.

§ 401.67 Procedure for commenting upon environmental impact statements.

(a) Comments prepared on draft environmental impact statements authored by other agencies will be based upon the relationship of the action proposed to the Commission's Comprehensive Plan.

(b) Comments will be organized consistent with the structure of the draft statement and will be as specific, substantive and factual as possible.

(c) Five copies of all comments made thereon will be furnished to the Council on Environmental Quality.

Subpart E—Review in Water Quality Cases

§ 401.71 Scope.

This subpart shall apply to the review, hearing and decision of objections and issues arising as a result of

administrative actions and decisions taken or rendered under the Basin Regulations.

§ 401.72 Notice and request for hearing.

The Executive Director shall serve notice of an action or decision by him under the Basin Regulations by personal service or certified mail, return receipt requested. The affected discharger shall be entitled (and the notice of action or decision shall so state) to show cause at a Commission hearing why such action or decision should not take effect. A request for such a hearing shall be filed with the Secretary of the Commission not more than 20 days after service of the Executive Director's determination. Failure to file such a request within the time limited shall be deemed to be an acceptance of the Executive Director's determination and a waiver of any further hearing.

§ 401.73 Form of request.

A request for a hearing may be informal but shall indicate the name of the individual and the address to which an acknowledgment may be directed. It may be stated in such detail as the objector may elect. The request shall be deemed filed only upon receipt by the Commission.

§ 401.74 Report.

Whenever the Executive Director determines that the request for a hearing is insufficient to identify the nature and scope of the objection, or that one or more issues may be resolved, reduced or identified by such action, he may require the objector to prepare and submit to the Commission, within such reasonable time (not less than 20 days) as he may specify, a technical report of the facts relating to the objection prior to the scheduling of the hearing. The report shall be required by notice in writing served upon the objector by certified mail, return receipt requested, addressed to the person or entity filing the request for hearing at the place indicated in the request.

§ 401.75 Form and contents of report.

(a) *Generally.* A request for a report under this subpart may require such information and the answers to such questions as may be reasonably pertinent to the subject of the action or determination under consideration.

(b) *Waste loading.* In cases involving objections to an allocation of the assimilative capacity of a stream, the report shall be signed and verified by a technically qualified person having personal knowledge of the facts stated therein, and shall include such of the following items as the Executive Director may require:

(1) A specification with particularity of the ground or grounds for the objection; and failure to specify a ground for objection prior to the hearing shall foreclose the objector from thereafter asserting such a ground at the hearing;

(2) A description of industrial processing and waste treatment operational characteristics in such detail as to permit an evaluation of the character, kind and quantity of the discharges, both treated and untreated, including the physical, chemical and biological properties of any liquid, gaseous, solid, radioactive, or other substance composing the discharge in whole or in part;

(3) The thermal characteristics of the discharges and the level of heat in flow;

(4) Information in sufficient detail to permit evaluation in depth of any inplant control or recovery process for which credit is claimed;

(5) An analysis of all the parameters that may have an effect on the strength of the waste or impinge upon the water quality criteria set forth in the Basin Regulations, including a determination of the rate of biochemical oxygen demand and the projection of a first-stage carbonaceous oxygen demand;

(6) Measurements of the waste as closely as possible to the processes where the wastes are produced, with the sample composited either continually or at frequent intervals (one-half hour or, where permitted by the Executive Director, one hour periods), so as to represent adequately the strength and volume of waste that is discharged; and

(7) Such other and additional specific technical data as the Executive Di-

rector may reasonably consider necessary and useful for the proper determination of a wasteload allocation.

§ 401.76 Protection of trade secrets; confidential information.

No person shall be required in such report to divulge trade secrets or secret processes. All information disclosed to any Commissioner, agent or employee of the Commission in any report required by these Rules shall be confidential for the purposes of section 1905 of Title 18 of the United States Code which provides:

> Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation or association, or permits any income return or copy thereof to be seen or examined by any persons except as provided by law; shall be fined not more than $1,000 or imprisoned not more than one year, or both; and shall be removed from office or employment. June 25, 1948, C.645, 62 Stat. 791.

§ 401.77 Failure to furnish report.

The Executive Director may, upon five days' notice to the objector, dismiss the request for a hearing as to any objector who fails to file a complete report within such time as shall be prescribed in the Director's notice.

§ 401.78 Informal conference.

Whenever the Executive Director deems it appropriate, he may cause an informal conference to be scheduled between an objector and such member of the Commission staff as he may designate. The purpose of such a conference shall be to resolve or narrow the ground or grounds of the objections.

§ 401.79 Consolidation of hearings.

Following such informal conferences as may be held, to the extent that the same or similar grounds for objections are raised by one or more objectors, the Executive Director may in his discretion and with the consent of the objectors, cause a consolidated hearing to be scheduled at which two or more objectors asserting that ground may be heard.

Subpart F—Conduct of Hearings

§ 401.81 Hearings generally.

(a) *Scope of subpart.* This subpart shall apply to hearings required for the purposes of Subparts C and D of this part and, to the extent applicable, to the conduct of administrative hearings for which no other provision is made by statute or regulation.

(b) *Timely request.* Any person aggrieved by any action or decision of the Executive Director taken under any Basin Regulation shall be entitled, upon timely filing of a request therefor, to a hearing in accordance with these regulations.

(c) *Optional joint hearings.* Whenever designated by a department, agency or instrumentality of a signatory party, and within any limitations prescribed by the designation, a hearing officer designated pursuant to this subpart may serve as a hearing officer, examiner or agent pursuant to such additional designation. The hearing officer may conduct joint hearings for the Commission and for such other department, agency or instrumentality. Pursuant to the additional designation, a hearing officer shall cause to be filed with the department, agency or instrumentality making the designation, a certified copy of the transcript of the evidence taken before him and, if requested, of his findings and recommendations. Neither the hearing officer nor the Delaware River Basin Commission shall have or exercise any power or duty as a result of such additional designation to decide the merits of any matter arising under the separate laws of a signatory party (other than the Delaware River Basin Compact).

(d) *Schedule.* The Executive Director shall cause the schedule for each hearing to be listed in advance upon a "hearing docket" which shall be posted in public view at the office of the Commission.

§ 401.82 Hearing officer.

(a) *Generally.* Hearings shall be conducted by one or more members of the Commission, by the Executive Director, or by such other hearing officer as the chairman may designate, except as provided in paragraph (b) of this section.

(b) *Wasteload allocation cases.* In cases involving the allocation of the assimilative capacity of a stream:

(1) The Executive Director shall appoint a hearing board of at least two persons. One of them shall be nominated by the water pollution control agency of the state in which discharge originates, and he shall be chairman. The board shall have and exercise the powers and duties of a hearing officer;

(2) A quorum of the board for purposes of the hearing shall consist of two members; and

(3) Questions of practice or procedure during the hearing shall be determined by the chairman.

§ 401.83 Hearing procedure.

(a) The hearing officer shall have the power to rule upon offers of proof and the admissibility of evidence, to regulate the course of the hearings, and to hold conferences for the settlement or simplification of issues.

(b) The hearing officer shall cause each witness to be sworn or to make affirmation.

(c) Any party to a hearing shall have the right to present evidence and to examine and cross-examine witnesses.

(d) When necessary, in order to prevent undue prolongation of the hearing, the hearing officer may limit the number of times any witness may testify, the repetitious examination or cross-examination of witnesses, or the extent of corroborative or cumulative testimony.

(e) The hearing officer shall exclude irrelevant, immaterial or unduly repetitious evidence, but the parties shall not be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received.

(f) Any person entitled to be heard may appear and be heard in person or be represented by an attorney at law or, if the applicant is a corporation, by its corporate officer, an authorized employee, or by an attorney at law.

(g) Briefs and oral argument may be required by the hearing officer and shall be permitted upon request made prior to the close of the hearing by any party. They shall be part of the record unless otherwise ordered by the hearing officer.

§ 401.84 Staff and other expert testimony.

(a) The Executive Director shall arrange for the presentation of testimony by the Commission's technical staff and other experts, as he may deem necessary or desirable, to incorporate in the record or support the administrative action, determination or decision which is the subject of the hearing.

(b) A party to the hearing may submit the testimony of an expert witness, to be made part of the record, whether or not the expert is present, provided that such testimony has been reduced to writing, sworn, and copies thereof distributed to all parties appearing at the hearing. Such testimony, however, shall not be admitted whenever the expert is not present and available for cross-examination at the hearing unless the testimony shall have been made available to all parties of record at least five days prior to the hearing and all parties have waived the right of cross-examination.

§ 401.85 Record of proceedings.

A record of the proceedings and evidence at each hearing shall be made by a qualified stenographer designated by the Executive Director. Where demanded by the applicant, objector, or any other person who is a party to these proceedings, or where deemed necessary by the hearing officer, the testimony shall be transcribed. In those instances where a transcript of proceedings is made, two copies shall be delivered to the Commission. The applicant, objector, or other person who desires copies shall obtain them

30-060 O—89——2

from the stenographer at such price as may be agreed upon by the stenographer and the person desiring the transcript.

§ 401.86 Assessment of costs.

(a) Whenever an adjudicatory hearing is required, the costs thereof, as herein defined, shall be assessed by the hearing officer to the applicant. For the purposes of this section costs include all incremental costs incurred by the Commission, including, but not limited to, hearing examiner and expert consultants reasonably necessary in the matter, stenographic record, rental of the hall and other related expenses.

(b) Upon the scheduling of a matter for adjudicatory hearing, the Secretary shall furnish to the applicant a reasonable estimate of the costs to be incurred under this section. The applicant may be required to furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a signatory state.

[42 FR 15310, Mar. 21, 1977]

§ 401.87 Findings and report.

The hearing officer shall prepare a report of his findings and recommendations. In the case of an objection to a wasteload allocation, the hearing officer shall make specific findings of a recommended allocation of carbonaceous oxygen demand, which may increase, reduce or confirm the Executive Director's determination. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel unless all parties have waived service of the report. The applicant and any objector may file objections to the report within 20 days after the service upon him of a copy of the report. A brief shall be filed together with any objections. The report of the hearing officer together with objections and briefs shall be promptly submitted to the Commission. The Commission may require or permit oral argument upon such submission prior to its decision.

[39 FR 25474, July 11, 1974. Redesignated at 42 FR 15310, Mar. 21, 1977]

§ 401.88 Action by the Commission.

The Commission will act upon the findings and recommendations of the hearing officer pursuant to law. The determination of the Commission will be in writing and shall be filed together with any transcript of the hearing, report of the hearing officer, objections, thereto, and all plans, maps, exhibits and other papers, records or documents relating to the hearing. Subject to the provisions of section 2-4.6, all such records, papers and documents may be examined by any person at the office of the Commission, and shall not be removed therefrom except temporarily upon the written order of the Secretary after the filing of a receipt therefor in form prescribed by the Secretary. Copies of any such records and papers may be made in the office of the Commission by any person, subject to such reasonable safeguards for the protection of the records as the Executive Director may require.

[39 FR 25474, July 11, 1974. Redesignated at 42 FR 15310, Mar. 21, 1977]

Subpart G—Penalties and Settlements in Lieu of Penalties

SOURCE: 52 FR 37602, Oct. 8, 1987, unless otherwise noted.

§ 401.91 Scope of subpart.

This subpart shall be applicable where the Commission shall have information indicating that a person has violated or attempted to violate any provision of the Commission's Compact or any of its rules, regulations or orders (hereafter referred to as possible violator). For the purposes of this subpart, person shall include person, partnership, corporation, business association, governmental agency or authority.

§ 401.92 Notice to possible violators.

Upon direction of the Commission the Executive Director shall, and in all other instances, the Executive Director may require a possible violator to show cause before the Commission why a penalty should not be assessed in accordance with the provisions of these rules and section 14.17 of the

Compact. The notice to the possible violator shall:

(a) Set forth the date on which the possible violator shall respond; and

(b) Set forth any information to be submitted or produced by the possible violator.

§ 401.93 The record for decision-making.

(a) *Written submission.* In addition to the information required by the Commission, any possible violator shall be entitled to submit in writing any other information that it desires to make available to the Commission before it shall act. The Executive Director may require documents to be certified or otherwise authenticated and statements to be verified. The Commission may also receive written submissions from any other persons as to whether a violation has occurred and the adverse consequences resulting from a violation of the Commission's Compact or its rules, regulations and orders.

(b) *Presentation to the Commission.* At the date set in the Notice, the possible violator shall have the opportunity to supplement its written presentation before the Commission by any oral statement it wishes to present and shall be prepared to respond to any questions from the Commission or its staff or to the statements submitted by persons affected by the possible violation.

§ 401.94 Adjudicatory hearings.

(a) An adjudicatory hearing, which may be in lieu of or in addition to proceedings pursuant to § 401.93 at which testimony may be presented and documents received shall not be scheduled unless:

(1) The Executive Director determines that a hearing is required to have an adequate record for the Commission; or

(2) The Commission directs that such a hearing be held.

(b) If an adjudicatory hearing is scheduled, the possible violator shall be given at least 14 days written notice of the hearing date unless waived by consent. Notice of such a hearing may be given to the general public and the press in the manner provided in section 14.4(b) of the Compact but may be waived by the Executive Director.

(c) Except to the extent inconsistent with the provisions of this subpart adjudicatory hearings shall be conducted in accordance with the provisions of §§ 491.83 through 401.88 (including § 401.86 *et seq.*).

§ 401.95 Assessment of a penalty.

The Executive Director may recommend to the Commission the amount of the penalty to be imposed. Such a recommendation shall be in writing and shall set forth the basis for the penalty amount proposed. Based upon the record submitted to the Commission, the Commission shall decide whether a violation has occurred that justifies the imposition of a penalty pursuant to § 14.17 of the Compact. If it is found that such a violation has occurred, the Commission shall determine the amount of the penalty to be paid.

§ 401.96 Factors to be applied in fixing penalty amount.

(a) Consideration shall be given to the following factors in deciding the amount of any penalty or any settlement in lieu of penalty:

(1) Previous violation, if any, of the Commission's Compact and regulations;

(2) Whether the violation was unintentional or willful and deliberate;

(3) Whether the violation caused adverse environmental consequences and the extent of any harm;

(4) The costs incurred by the Commission or any signatory party relating to the failure to comply with the Commission's Compact and regulations;

(5) The extent to which the violator has cooperated with the Commission in correcting the violation and remediating any adverse consequences or harm that resulted therefrom; and

(6) Whether the failure to comply with the Commission's Compact and regulations was economically beneficial to the violator.

(b) The Commission retains the right to waive any penalty or reduce the amount of the penalty should it determine that, after consideration of

the factors in paragraph (a) of this section, extenuating circumstances justify such action.

§ 401.97 Enforcement of penalties.

Any penalty imposed by the Commission shall be paid within 30 days or such further time period as shall be fixed by the Commission. The Executive Director and Commission counsel are authorized to take such action as may be necessary to assure enforcement of this subpart. If a proceeding before a court becomes necessary, the action of the Commission in determining a penalty amount shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to § 14.17 of the Compact.

§ 401.98 Settlement by agreement in lieu of penalty.

A possible violator may request settlement of a penalty proceeding by agreement. If the Executive Director determines that settlement by agreement in lieu of a penalty is in the best interest of the Commission, he may submit to the Commission a proposed settlement agreement in lieu of a penalty. No settlement will be considered by the Commission unless the possible violator has indicated to the Commission acceptance of the terms of the agreement and the intention to comply with all requirements of the settlement agreement including payment of any settlement amount within the time period provided. If the Commission determines not to approve a settlement agreement, the Commission may proceed with a penalty action in accordance with this subpart.

§ 401.99 Suspension or modification of penalty.

The Commission may postpone the imposition of a penalty or provide for reconsideration of the penalty amount imposed pending correction of the condition that gave rise to the violation or pending a satisfactory resolution of any adverse consequences that resulted from the violation.

Subpart H—Public Access to Records and Information

AUTHORITY: Pub. L. 93-502, as amended.

SOURCE: 40 FR 14056, Mar. 28, 1975; 40 FR 17987, Apr. 24, 1975, unless otherwise noted. Redesignated at 52 FR 37602, Oct. 8, 1987.

§ 401.101 Policy on disclosure of Commission records.

The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the property rights of persons in trade secrets and confidential commercial or financial information, and the need for the Commission to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

§ 401.102 Partial disclosure of records.

If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the remaining record will be disclosed unless the two are so inextricably intertwined that it is not feasible to separate them or release of the disclosable information would compromise or impinge upon the nondisclosable portion of the record.

§ 401.103 Request for existing records.

(a) Any written request to the Commission for existing records not prepared for routine distribution to the public shall be deemed to be a request for records pursuant to the Freedom of Information Act, whether or not the Freedom of Information Act is mentioned in the request, and shall be governed by the provisions of this part.

(b) Records or documents prepared by the Commission for routine public distribution, e.g., pamphlets, speeches, public information and educational materials, shall be furnished free of charge upon request as long as the supply lasts. The provisions of this part shall not be applicable to such requests.

(c) All existing Commission records are subject to routine destruction according to standard record retention schedules.

§ 401.104 Preparation of new records.

The Freedom of Information Act and the provisions of this part apply only to existing records that are reasonably described in a request filed with the Commission pursuant to the procedures herein established. The Commission shall not be required to prepare new records in order to respond to a request for information.

§ 401.105 Indexes of certain records.

(a) Indexes shall be maintained and revised at least quarterly, for the following Commission records:

(1) Final opinions and orders made in the adjudication of cases.

(2) Statements of policy and interpretation adopted by the Commission and still in force and not published in the FEDERAL REGISTER or official minutes of Commission meetings.

(3) Administrative staff manuals and instructions to staff that affect members of the public.

(b) A copy of each such index is available at cost of duplication from the FOIA Officer.

§ 401.106 FOIA Officer.

The Executive Director shall designate a Commission employee as the FOIA Officer. The FOIA Officer shall be responsible for Commission compliance with the Freedom of Information Act and these regulations. All requests for agency records shall be sent in writing to:

FOIA Officer
Delaware River Basin Commission
P.O. Box 360
Trenton, N.J. 08603

§ 401.107 Permanent file of requests for Commission records.

The Commission shall maintain a permanent file of all requests for Commission records and all responses thereto, incuding a list of all records furnished in response to a request. This file is available for public review during working hours.

§ 401.108 Filing a request for records.

(a) All requests for Commission records shall be filed in writing delivered to the FOIA Officer, or by mailing it to the Commission. The Commission will supply forms for written requests.

(b) A request for Commission records shall reasonably describe the records being sought, in a way that they can be identified and located. A request should include all pertinent details that will help identify the records sought. A person requesting disclosure of records shall be permitted an opportunity to review them without the necessity for copying them where the records involved contain only disclosable data and information.

(1) If the description is insufficient to locate the records requested, the FOIA Officer will so notify the person making the request and indicate the additional information needed to identify the records requested.

(2) Every reasonable effort shall be made by the staff to assist in the identification and location of the records sought.

(3) In any situation in which it is determined that a request for voluminous records would unduly burden and interfere with the operations of the Commission, the person making the request will be asked to be more specific and to narrow the request, and to agree on an orderly procedure for the production of the requested records.

(c) Upon receipt of a request for records, the FOIA Officer shall enter it in a public log (which entry may consist of a copy of the request). The log shall state the date and time received, the name and address of the person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to § 401.99(b), the date(s) any records are subsequently furnished, the number of staff-hours and grade levels of persons who spent time responding to the request, and the payment requested and received.

(d) A denial of a request for records, in whole or in part, shall be signed by the FOIA Officer. The name and title or position of each person who participated in the denial of a request for records shall be set forth in a letter denying the request. This requirement may be met by attaching a list of such individuals to the letter.

§ 401.109 Time limitations.

(a) All time limitations established pursuant to this section shall begin as of the time at which a request for records is logged in by the FOIA Officer pursuant to § 401.98(c). An oral request for records shall not begin any time requirement. A written request for records sent elsewhere within the Commission shall not begin any time requirement until it is redirected to the FOIA Officer and is logged in accordance with § 401.98(c). A request that is expected to involve fees in excess of $50 will not be deemed received until the requester is promptly notified and agrees to bear the cost or has so indicated on his request.

(b) Within ten (10) working days (excepting Saturdays, Sundays, and legal public holidays) after a request for records is logged by the FOIA Officer, the record shall be furnished or a letter shall be sent to the person making the request determining whether, or the extent to which, the Commission will comply with the request, and, if any records are denied, the reasons therefor.

(1) If all of the records requested have been located and a final determination has been made with respect to disclosure of all of the records requested, the letter shall so state.

(2) If all of the records have not been located or a final determination has not yet been made with respect to disclosure of all of the records requested, the letter shall state the extent to which the records involved shall be disclosed pursuant to the rules established in this part.

(3) In the following unusual circumstances, the time for sending this letter may be extended by the Executive Director for up to an additional ten (10) working days by written notice to the person making the request setting forth the reasons for such extension and the time within which a determination is expected to be dispatched:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission's Headquarters.

(ii) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Commission having substantial subject-matter interest therein.

(c) If any record is denied, the letter shall state the right of the person requesting such records to appeal any adverse determination to the Executive Director of the Commission. Such an appeal shall be filed within thirty (30) days from receipt of the FOIA Officer's determination denying the requested information (where the entire request has been denied), or from the receipt of any information made available pursuant to the request (where the request has been denied in part). Within twenty (20) working days (excepting Saturdays, Sundays, and legal public holidays) after receipt of any appeal, or any authorized extension, the Executive Director or his designee shall make a determination and notify the appellant of his determination. If the appeal is decided in favor of the appellant the requested information shall be promptly supplied as provided in this part. If on appeal the denial of the request for records is upheld in whole or in part, the appellant shall be entitled to appeal to the Commission at its next regular meeting. In the event that the Commission confirms the Executive Director's denial the appellant shall be notified of the provisions for judicial review.

(d) If the request for records will result in a fee of more than $25, determination letter under § 401.99 shall specify or estimate the fee involved and may require prepayment, as well as payment of any amount not yet received as a result of any previous request, before the records are made available. If the fee is less than $25, prepayment shall not be required unless payment has not yet been received for records disclosed as a result of a previous request.

(e) Whenever possible, the determination letter required under § 401.99(b), relating to a request for

records that involves a fee of less than $25.00, shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter. For requests for records involving a fee of more than $25.00, the records shall be forwarded as soon as possible after receipt of payment.

§ 401.110 Fees.

(a) Unless waived in accordance with the provisions of § 401.101, the following fees shall be imposed for disclosure of any record pursuant to this part.

(1) *Copying of records.* Fifteen cents per copy of each page.

(2) *Clerical searches.* $1 for each one-quarter hour spent by clerical personnel searching for and producing a requested record, including time spent copying any record.

(3) *Nonclerical searches.* $1.80 for each one-quarter hour spent by professional or managerial personnel searching for and producing a requested record, including time spent copying any record.

(4) *Forwarding material to destination.* Postage, insurance, and special fees will be charged on an actual cost basis.

(b) No charge shall be made for the time spent in resolving legal or policy issues or in examining records for the purpose of deleting nondisclosable portions thereof.

(c) Payment shall be made by check or money order payable to "Delaware River Basin Commission" and shall be sent to the FOIA Officer.

§ 401.111 Waiver of fees.

(a) No fee shall be charged for disclosure of records pursuant to this part where:

(1) The records are requested by a congressional committee or subcommittee or the General Accounting Office.

(2) The records are requested by an agency of a signatory party.

(3) The records are requested by a court of competent jurisdiction.

(4) The records are requested by a state or local government having jurisdiction thereof.

(b) No fee shall be charged if a record requested is not found or for any record that is totally exempt from disclosure.

§ 401.112 Exempt information.

The following materials and information covered by this part shall be exempt from disclosure; that is, information that is:

(a) Related solely to the internal personnel matters of the Commission;

(b) Specifically exempted from disclosure by statute;

(c) Trade secrets and commercial or financial information obtained from a person and privileged or confidential. (For purposes of this section a trade secret may consist of any formula, pattern, device, or compilation of information which is used in one's business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. Commercial or financial information that is privileged or confidential means valuable data or information which is used in one's business and is of a type customarily held in strict confidence or regarded as privileged and not disclosed to any member of the public by the person to whom it belongs.)

(d) Inter-agency or intra-agency memorandums or letters other than purely factual compilations, which would not be available by law to a party other than an agency in litigation with the Commission;

(e) Personnel and medical files and similar files and disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(f) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel.

§ 401.113 Segregable materials.

Any reasonably segregable portion of a record shall be provided to any

person requesting such record after deletion of the portions which are exempt under this part, except as provided in § 401.92.

§ 401.114 Data and information previously disclosed to the public.

Any Commission record that is otherwise exempt from public disclosure pursuant to this part is available for public disclosure to the extent that it contains data or information that have previously been disclosed in a lawful manner to any member of the public, other than an employee or consultant or pursuant to other commercial arrangements with appropriate safeguards for secrecy.

§ 401.115 Discretionary disclosure by the Executive Director.

(a) The Executive Director may, in his discretion, disclose part or all of any Commission record that is otherwise exempt from disclosure pursuant to this part. The Executive Director shall exercise his discretion to disclose such records whenever he determines that such disclosure is in the public interest, will promote the objectives of the Commission, and is consistent with the rights of individuals to privacy, the property rights of persons in trade secrets, and the need for the Commission to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

(b) Discretionary disclosure of a record pursuant to this section shall invoke the requirement that the record shall be disclosed to any person who requests it pursuant to § 401.98, but shall not set a precedent for discretionary disclosure of any similar or related record and shall not obligate the Executive Director to exercise his discretion to disclose any other record that is exempt from disclosure.

§ 401.116 Disclosure to consultants, advisory committees, State and local government officials, and other special government employees.

Data and information otherwise exempt from public disclosure may be disclosed to Commission consultants, advisory committees, state and local government officials, and other special government employees for use only in their work in cooperation with the Commission. Such persons are thereafter subject to the same restrictions with respect to the disclosure of such data and information as any other Commission employee.

§ 401.117 Disclosure to other Federal government departments and agencies.

Any Commission record otherwise exempt from public disclosure may be disclosed to other Federal Government departments and agencies, except that trade secrets may be disclosed only to a department or agency that has concurrent jurisdiction over the matter and separate legal authority to obtain the specific information involved. Any disclosure under this section shall be pursuant to an agreement that the record shall not be further disclosed by the other department or agency except with the written permission of the Commission.

§ 401.118 Disclosure in administrative or court proceedings.

Data and information otherwise exempt from public disclosure may be revealed in Commission administrative or court proceedings where the data or information are relevant. The Commission will request that the data or information be held in camera and that any other appropriate measures be taken to reduce disclosure to the minimum necessary under the circumstances.

§ 401.119 Disclosure to Congress.

All records of the Commission shall be disclosed to Congress upon an authorized request.

Subpart I—General Provisions

SOURCE: 40 FR 14059, Mar. 28, 1975; 40 FR 17987, Apr. 24, 1975, unless otherwise noted. Redesignated at 52 FR 37602, Oct. 8, 1987.

§ 401.121 Definitions.

For the purposes of this part, except as the context may otherwise require:

(a) All words and phrases which are defined by section 1.2 of the Compact shall have the same meaning herein.

(b) Words and phrases which are defined by part I of the Administrative

Manual (section 1-3) shall have the same meaning for the purposes of this Part 401.

(c) "Application" shall mean a request for action by the Commission in any written form, including without limitation thereto, a letter, referral by any agency of a signatory party, or an official form prescribed by the Commission; provided that whenever an official form of application has been duly required, an application shall not be deemed to be pending before the Commission until such time as such form, together with the information required thereby, has been completed and filed.

(d) "Applicant" shall mean any sponsor or other person who has submitted an application to the Commission.

(e) "Sponsor" shall mean any person authorized to initiate, construct or administer a project.

§ 401.122 **Supplementary details.**

Forms, procedures and supplementary information, to effectuate these regulations, may be provided or required by the Executive Director as to any hearing, project or class of projects.

§ 401.123 **Waiver of rules.**

The Commission may, for good cause shown, waive rules or require additional information in any case.

§ 401.124 **Construction.**

This part is promulgated pursuant to section 14.2 of the Compact and shall be construed and applied subject to all of the terms and conditions of the Compact and of the provisions of section 15.1 of Pub. L. 87-328, 75 Stat. 688.

PART 410—BASIN REGULATIONS; WATER CODE AND ADMINISTRATIVE MANUAL—PART II! WATER QUALITY REGULATIONS

§ 410.1 **Basin regulations—Water Code and Administrative Manual—Part III Water Quality Regulations.**

(a) The Water Code of the Delaware River Basin is a codification of regulations of the Delaware River Basin Commission concerning the policies and standards applicable to public and private water projects and programs within the Delaware River Basin. Article I of the water code sets forth general policies of the Commission. Article II concerns the conservation, development and utilization of Delaware River Basin water resources. Article III sets forth the water quality standards and guidelines for the Delaware River Basin. The Commission's Administrative Manual—Part III, Water Quality Regulations, apply to all waste dischargers, public and private, using the waters of the Delaware River Basin. The regulations contained within the Water Code and within the Administrative Manual—Part III Water Quality Regulations of the Delaware River Basin Commission are hereby incorporated in and made a part of this Part 410 and include all amendments to the Water Code and the Administrative Manual—Part III Water Quality Regulations adopted through May 28, 1986.

(b) The Water Code and the Administrative Manual—Part III and the regulations contained therein and information about them may be obtained from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

(c) The regulations may be amended from time to time by the Commission after due notice and public hearing. An official file of changes will be kept for public inspection in the offices of the Commission.

(Delaware River Basin Compact, 75 Stat. 688)

[51 FR 20960, June 10, 1986]

PART 415—BASIN REGULATIONS—FLOOD PLAIN REGULATIONS

GENERALLY

Sec.

415.1 Short title.
415.2 Definitions.
415.3 Purpose and findings.

TYPES OF PROJECTS AND JURISDICTION

415.20 Class I projects.
415.21 Class II projects.

STANDARDS

415.30 Regulations generally.
415.31 Prohibited uses.
415.32 Permitted uses generally.
415.33 Uses by special permit.

ADMINISTRATION

415.40 Administrative agency.
415.41 Special permits.
415.42 Technical standards.
415.43 Mapped and unmapped delineations.

ENFORCEMENT

415.50 General conditions.
415.51 Prior non-confirming structures.
415.52 Violations.

AUTHORITY: Pub. L. 87-328 (75 Stat. 688).

SOURCE: 42 FR 13541, Mar. 11, 1977, unless otherwise noted.

GENERALLY

§ 415.1 Short title.

This part shall be known and may be cited as the "Flood Plain Regulations."

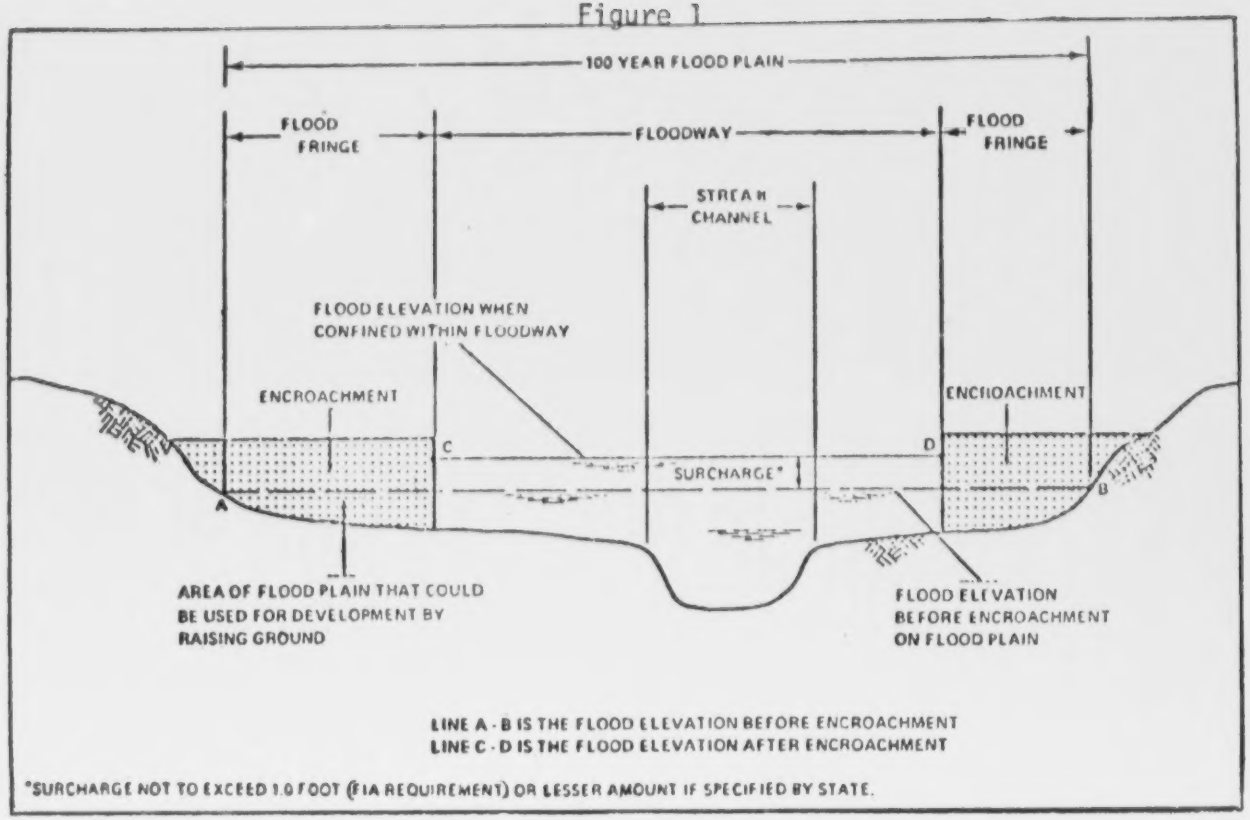
§ 415.2 Definitions.

For the purposes of this part, except as otherwise required by the context:

"Project" means the same word as defined by section 1.2(g) of the Delaware River Basin Compact.

"Floodway" means the channel of the watercourse and those portions of the adjoining flood plains which are reasonably required to carry and discharge the regulatory flood. For this purpose the limit of the floodway shall be established by allowing not more than a one-foot rise of the water surface elevation of the regulatory flood as a result of encroachment. Wherever practical, equal conveyance reduction from each side of the flood plain shall be used. (See Figure 1.)

Figure 1


100 YEAR FLOOD PLAIN
FLOOD FRINGE
FLOODWAY
FLOOD FRINGE
STREAM CHANNEL
FLOOD ELEVATION WHEN CONFINED WITHIN FLOODWAY
ENCROACHMENT
ENCROACHMENT
C
D
SURCHARGE*
A
B
AREA OF FLOOD PLAIN THAT COULD BE USED FOR DEVELOPMENT BY RAISING GROUND
FLOOD ELEVATION BEFORE ENCROACHMENT ON FLOOD PLAIN
LINE A - B IS THE FLOOD ELEVATION BEFORE ENCROACHMENT
LINE C - D IS THE FLOOD ELEVATION AFTER ENCROACHMENT
*SURCHARGE NOT TO EXCEED 1.0 FOOT (FIA REQUIREMENT) OR LESSER AMOUNT IF SPECIFIED BY STATE.

"Flood fringe" means that portion of the flood hazard area outside the floodway.

"Flood hazard area" means the area inundated by the regulatory flood.

"Flood plain" means the area adjoining the channel of a stream which has been or hereafter may be covered by flood water.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures which reduce or eliminate flood damage to lands, water and sanitary facilities, structures, and contents of buildings.

"Flood protection elevation" means one foot above the elevation of the flood that has a one percent chance of occurring in any one year. (The 100-year flood).

"Major tributary" means the mainstem of the following streams:

PENNSYLVANIA

Brandywine Creek, Brodhead Creek, Big Bushkill Creek, Lackawaxen, Lehigh, Schuylkill, Neshaminy.

DELAWARE

Brandywine Creek, Christina.

NEW YORK

East Branch, Mongaup, Neversink, West Branch.

NEW JERSEY

Assunpink, Musconetcong, Paulins Kill, Rancocas, Pequest.

"Official flood plain map" means a map showing the flood plain area of a community prepared pursuant to the National Flood Insurance Act, or a map recognized by the Executive Director as meeting equivalent hydraulic or engineering criteria.

"Regulatory flood" means the flood which has a one percent chance of occurring in any one year. (The 100-year flood.)

"Structure" means any assembly of material above or below the surface of land or water, including but not limited to, buildings, dams, fills, levees, bulkheads, dikes, jetties, embankments, causeways, culverts, roads, railroads and bridges.

§ 415.3 Purpose and findings.

(a) The Commission hereby finds and determines that the use of flood plains is affected with a public interest due to:

(1) The danger to life and property due to increased flood heights or velocities caused by encroachments.

(2) The danger that materials may be swept onto other lands or downstream to the injury of others.

(3) The requirements of a facility for a waterfront location.

(b) In order to protect the public interest, the following principles and goals have been determined:

(1) The overall goal is prudent land use within the physical and environmental constraints of the site.

(2) The principle of equal and uniform treatment shall apply to all flood plain users who are similarly situated.

(3) Flood plain use shall not result in nuisance to other properties.

(4) Flood plain use shall not threaten public safety, health and general welfare.

(5) Future land uses in private flood plains shall not result in public expense to protect the property and associated public services from flood damage.

(6) All future public and private flood plain users shall bear the full direct and indirect costs attributable to their use and actions.

(7) Restrictions on flood plain use, and flood hazard information shall be widely publicized.

(8) Land and water use regulations of responsible units of government shall not impair or conflict with the flood plain use standards duly adopted for the basin, except as provided for in § 415.42(a) of this part.

(9) Plans for land and water use adopted by responsible agencies shall not impair or conflict with these flood plain use standards.

(10) No action of any unit of government shall impair or conflict with these flood plain use standards.

TYPES OF PROJECTS AND JURISDICTION

§ 415.20 Class I projects.

Projects described in paragraphs (a) and (b) of this section shall be subject

to review by the Commission under standards provided by this section and in accordance with the provisions of §§ 415.30 through 415.33 of this part, as follows:

(a) All projects subject to review by the Commission under section 3.8 of the Compact and the regulations thereunder.

(b) State and local standards of flood plain regulation.

§ 415.21 Class II projects.

Class II projects, subject to review in accordance with §§ 415.40 through 415.43 of this part, include all projects other than Class I projects, in non-tidal areas of the basin, which involve either:

(a) A development of land, either residential or non-residential within a flood hazard area which:

(1) Includes one or more structures covering a total land area in excess of 50,000 square feet; or

(2) Contains in excess of 25 residential building lots or 25 dwelling units as part of an integrated development plan whether or not such development is included in a single application; or

(b) A development of land in the flood hazard area to mine, manufacture, process, store or dispose of materials which, if flooded, would pollute the waters of the basin or threaten damage to off-site areas, including, without limitation thereto, materials which are poisonous, radioactive, biologically undesirable or floatable.

Standards

§ 415.30 Regulations generally.

The uses of land within a flood hazard area shall be subject to regulation within one of the following categories:

(a) Prohibited uses;

(b) Permitted uses generally;

(c) Uses by special permit.

§ 415.31 Prohibited uses.

(a) Within the floodway, except as permitted by special permit, the following uses are prohibited:

(1) Erection of any structure for occupancy at any time by humans or animals.

(2) Placing, or depositing, or dumping any spoil, fill or solid waste.

(3) Stockpiling or disposal of pesticides, domestic or industrial waste, radioactive materials, petroleum products or hazardous material which, if flooded, would pollute the waters of the basin.

(4) The storage of equipment or of buoyant materials, except for purposes of public safety.

(b) Within the flood fringe, except as permitted by special permit, the following uses are prohibited:

(1) Stockpiling or disposal of pesticides, domestic or industrial waste, radioactive materials, petroleum products or hazardous material which, if flooded, would pollute the waters of the basin.

(2) Any use which will adversely affect the capacity of channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility.

§ 415.32 Permitted uses generally.

(a) Within the floodway, the following uses are permitted to the extent that they do not require structures, fill or storage of materials or permanently installed equipment, and do not adversely affect the capacity of the floodway:

(1) Agricultural uses such as general farming, livestock, and dairy farming, horticulture, truck farming, sod farming, forestry, wild crop harvesting, and normal operating practices associated therewith.

(2) Industrial-commercial uses such as loading areas, parking areas and airport landing strips.

(3) Private and public recreational uses such as golf courses, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails.

(4) Uses such as lawns, gardens, parking areas and play areas.

(b) Within the flood fringe, the following uses are permitted:

(1) Any use permitted in the floodway.

(2) Residences and other structures constructed so that the first floor, including basement, is above the Flood Protection Elevation. When fill is used the finished fill elevation shall be no lower than the Flood Protection Elevation for the particular area and shall extend at least 15 feet beyond the limits of any structure or building erected thereon.

§ 415.33 Uses by special permit.

(a) Within the floodway the following uses by special permit may be authorized under the standards hereinafter provided:

(1) Uses or structures accessory to open space use.

(2) Circuses, carnivals and similar transient enterprises.

(3) Drive-in theaters, signs and billboards.

(4) Extraction of sand, gravel and other non-toxic materials.

(5) Marinas, boat liveries, docks, piers, wharves and water control structures.

(6) Fish hatcheries.

(7) Railroads, streets, bridges, utility transmission lines and pipelines.

(b) Within the flood fringe the following uses by special permit may be authorized under standards hereinafter provided:

(1) *Non-residential uses generally.* Structures other than residence shall ordinarily be elevated as herein provided but may in special circumstances be otherwise flood proofed to a point above the Flood Protection Elevation.

(2) *Commercial uses.* Commercial structures shall be elevated so that no first floor or basement floor is below the Flood Protection Elevation; or such structures may be flood proofed to the Flood Protection Elevation. Accessory land uses, such as yards, railroad tracks and parking lots may be at lower elevations. However, a permit for such facilities to be used by the general public shall not be granted in the absence of a flood warning system, if the area is inundated to a depth greater than two feet or subject to flood velocities greater than four feet per second upon the occurrence of the Regulatory Flood.

(3) *Manufacturing and industrial uses.* Manufacturing and industrial buildings, structures, and appurtenant works shall be elevated so that no first floor or basement floor is below the Flood Protection Elevation; or such structures may be flood proofed to the Flood Protection Elevation. Measures shall be taken to minimize flood water interference with normal plant operations especially for streams having protracted flood durations. Certain accessory land uses as yards and parking lots may have lesser protection subject to the flood warning requirements set out in 2 above.

(4) *Utilities, railroad tracks, streets and bridges.* Public utility facilities, roads, railroad tracks and bridges shall be designed to minimize increases in flood elevations and shall be compatible with local comprehensive flood plain development plans to the extent applicable. Protection to the Flood Protection Elevation shall be provided where failure or interruption of these public facilities would result in danger to the public health or safety, or where such facilities are essential to the orderly functioning of the area. Where failure or interruption of service would not endanger life or health, a lesser degree of protection may be provided for minor or auxiliary roads, railroads or utilities.

(5) *Water supply and waste treatment.* No new construction, addition or modification of a water supply or waste treatment facility shall be permitted unless the lowest operating floor of such facility is above the Flood Protection Elevation, or the facility is flood proofed according to plans approved by the Commission, nor unless emergency plans and procedures for action to be taken in the event of flooding are prepared. Plans shall be filed with the Delaware River Basin Commission and the concerned state or states. The emergency plans and procedures shall provide for measures to prevent introduction of any pollutant or toxic material into the flood water or the introduction of flood waters into potable supplies.

Administration

§ 415.40 Administrative agency.

(a) Class I projects as defined by § 415.20 of this part shall be subject to

review and approval by the Commission.

(b) Class II projects as defined by § 415.21 shall be subject to review and approval by a duly empowered state or local agency; and if there be no such state or local agency at any time on and after January 1, 1978, and only during such time, the Commission may review any such project which has been identified by the Executive Director as having special flood hazards, and: (1) Is located along the mainstem Delaware River or a major tributary thereof, or (2) an agency of a signatory party requests such review.

§ 415.41 Special permits.

A special permit may be granted, or granted on stated conditions, provided:

(a) There is a clear balance in favor of the public interest in terms of the following environmental criteria:

(1) The importance of a facility to the community.

(2) The availability of alternative locations not subject to flooding for the proposed use.

(3) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

(4) The relationship of the proposed use to any applicable comprehensive plan or flood plain management program for the area.

(5) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(6) The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.

(7) The degree to which the proposed activity would alter natural water flow or water temperature.

(8) The degree to which archaeological or historic sites and structures, endangered or rare species of animals or plants, high quality wildlife habitats, scarce vegetation types, and other irreplaceable land types would be degraded or destroyed.

(9) The degree to which the natural, scenic and aesthetic values at the proposed activity site could be retained.

(b) The project shall not:

(1) Endanger human life.

(2) Have high flood damage potential.

(3) Obstruct flood flows nor increase flood heights or velocities unduly whether acting alone or in combination with other uses.

(4) Degrade significantly the water carrying capacity of any delineated floodway or channel.

(5) Increase significantly the rate of local runoff, erosion, or sedimentation.

(6) Degrade significantly the quality of surface water or the quality or quantity of ground water.

(7) Be susceptible to flotation.

(8) Have service facilities installed below the elevation of the regulatory flood without being adequately flood proofed.

§ 415.42 Technical standards.

(a) Standards used by state and local governments shall conform in principle to Commission standards but may vary in detail provided that resulting flood plain use will not be less restrictive than would result from the application of Commission standards. The Commission will review proposed state and local flood plain regulations to determine their compliance with Commission standards.

(b) Because of the variety and diversity of presently recognized hydrologic procedures, no one procedure or method is prescribed for determining the peak flow in cubic feet per second for the 100-year storm (Q 100) on which profiles for the delineation of flood hazard areas are based. The following may be used:

(1) A uniform Technique for Determining Flood Flow Frequencies—Bulletin No. 15—Water Resources Council, December 1967.

(2) Basin-Wide Program for Flood Plain Delineation—Delaware River Basin Commission—Anderson-Nichols & Co., Inc., June 1973.

(3) Magnitude and Frequency of Floods in New Jersey with Effects of Urbanization—Special Report 38 U.S.G.S.—New Jersey Department of Environmental Protection, 1974.

(4) Guidelines for Determining Flood Flow Frequency—Bulletin No. 17—Water Resources Council, March 1976.

State and local agencies may use methods resulting in Q 100s which are in reasonable agreement with those of the Commission. Any significant difference shall be reviewed with and subject to approval by the Executive Director.

(c) Methods and procedures shall be uniform, so far as practicable, within sub-basins which have a major effect on the larger basins of which they are a part. To assist in achieving this objective the Commission staff will periodically provide to the various interested governmental agencies and others Q 100 data as developed by the Delaware River Basin Commission Hydrology Coordinating Committee for key locations in the Delaware River Basin. These will be based on a Log Pearson Type 3 analysis of data from the U.S.G.S. gaging stations using station skew, regional skew, or weighted skew, depending on the scope of data at each station.

§ 415.43 Mapped and unmapped delineations.

(a) Whenever an official flood plain map providing the pertinent information is available with respect to a given project, the map shall be used for the delineation of the flood hazard area, floodway, flood fringe and determination of flood protection elevation.

(b) Whenever an official flood plain map providing the required information is not available with respect to a given project, the administrative agency shall require the project landowner to submit details concerning the proposed uses as needed to determine the floodway and flood fringe limits at the proposed site, including: cross-sections of the stream channel and overbanks, stream profile, and factors involved in determining obstructions to flow. From the data submitted, soil surveys, historic flood maps, high water marks and other empirical data, the applicant, subject to verification by the administrative agency, shall calculate flood hazard areas, and establish the flood protection elevation for the particular site.

(c) Pending the preparation and completion of flood plain mapping, a "general flood plain" area shall be prescribed by the administrative agency to delineate for public guidance the areal limits of site locations which are required to be submitted for review under this regulation.

Enforcement

§ 415.50 General conditions.

On and after January 1, 1978, where: (a) The flood hazard at the site is clear, present and significant, or the local government having jurisdiction has special flood hazard areas identified pursuant to the National Flood Insurance Act; and (b) the site is not subject to an approved state or municipal regulatory system having the same or similar effect on the flood hazard as this regulation, the Commission may condition its approval on any local governmental project under section 3.8 of the Compact upon the adoption and enforcement of flood plain regulations, approved hereunder, by the state or local government having jurisdiction.

§ 415.51 Prior non-conforming structures.

A structure which was lawful before the adoption of this regulation but which is not in conformity with the provisions hereof, shall be subject to the following conditions (to be enforced by the appropriate authority as to Class I and Class II projects, respectively, under §§ 415.40 through 415.43 of this part):

(a) A non-conforming structure in the floodway may not be expanded, except that it may be modified, altered or repaired to incorporate flood proofing measures provided such measures do not raise the level of the 100-year flood.

(b) A non-conforming structure in the floodway which is destroyed or damaged by any means, including a flood, to the extent of 50 percent or more of its market value at that time may not be restored, repaired, reconstructed or improved except in conformity with the provisions of these regulations.

§ 415.52 Violations.

Any violation of this regulation shall be subject to penalties imposed by the Compact.

PART 420—BASIN REGULATIONS—WATER SUPPLY CHARGES

GENERAL

Sec.
420.1 Definitions.

WATER SUPPLY POLICY

420.21 Policy.
420.22 Prohibition; sanctions.
420.23 Exempt uses under the Compact.
420.24 Effective date of rates.

ENTITLEMENT; MEASUREMENT; BILLING

420.31 Certificate of entitlement.
420.32 Measurement and billing of water taken.
420.33 Payment of bills.

CHARGES; EXEMPTIONS

420.41 Schedule of water charges.
420.42 Contracts; minimum charge.
420.43 Exempt use.
420.44 Cooling water.
420.45 Historical use.

HYDROELECTRIC POWER WATER USE CHARGES

420.51 Hydroelectric power plant water use charges.

AUTHORITY: Pub. L. 87-328 (75 Stat. 688).

SOURCE: 42 FR 13544, Mar. 11, 1977, unless otherwise noted.

GENERAL

§ 420.1 Definitions.

For the purposes of this Part 420, except as otherwise required by the context:

"Person" means any person, corporation, partnership, association, trust, or other entity, public or private.

"Water user" means any person who uses, takes, withdraws or diverts surface waters within the Delaware River Basin.

"Executive Director" means the Executive Director of the Delaware River Basin Commission.

"Consumptive use" means the water lost due to transpiration from vegetation in the building of plant tissue, incorporated into products during their manufacture, lost to the atmosphere from cooling devices, evaporated from water surfaces, exported from the Delaware River Basin, or any other water use for which the water withdrawn is not returned to the surface waters of the basin undiminished in quantity.

WATER SUPPLY POLICY

§ 420.21 Policy.

The provisions of this Part 420 implement Commission Resolution No. 71-4 (Comprehensive Plan) relating to water supply charges.

§ 420.22 Prohibition; sanctions.

Any person, firm, corporation or other entity, including a public corporation, body or agency, who shall use, withdraw or divert surface waters of the basin, shall pay such charges therefor as may be required by this resolution. Any violation of this resolution shall be subject to penalty as prescribed under Article 14.17 of the Compact. The Commission may also recover the value (according to the established water pricing schedules of the Commission) of any such use, withdrawal or diversion, and invoke the jurisdiction of the courts to enjoin any further use, withdrawal or diversion, unless all charges under this resolution are paid in full when due.

§ 420.23 Exempt uses under the Compact.

(a) Section 15.1(b) of the Delaware River Basin Compact provides that "no provision of section 3.7 of the Compact shall be deemed to authorize the Commission to impose any charge for water withdrawals or diversions from the basin if such withdrawals or diversions could lawfully have been made without charge on the effective date of the Compact; * * *" In compliance with this provision: There shall be no charge for water withdrawn or diverted in quantities not exceeding the legal entitlement of the user, determined as of October 27, 1961. Each water user may submit proof satisfactory to the Commission of the factors constituting legal entitlement, as defined in paragraph (b) thereof. In the absence of such proof of these conditions as of October 27, 1961, the quantity of water exempt from charge to each user will be the legal entitlement of the user determined as of March 31, 1971.

(b) For the purposes of paragraph (a) of this section:

(1) "Legal entitlement" means the quantity or volume of water expressed in million gallons per month determined by the lesser of the following conditions:

(i) A valid and subsisting permit, issued under the authority of one of the signatory parties, if such permit was required as of October 27, 1961, or thereafter;

(ii) Physical capability as required for such taking; or

(iii) The total allocable flow without augmentation by the Commission, using a seven-day, ten-year, low-flow criterion measured at the point of withdrawal or diversion.

(2) "Physical capability" means the capacity of pumps, water lines and appurtenances installed and operable, determined according to sound engineering principles. The physical capability specifically includes plant facilities actually using water, but excludes facilities which may have been installed in anticipation of future plant expansion not yet realized.

(c) Whenever adequate records of legal entitlement for agricultural irrigation purposes are not available to the Commission, such legal entitlement shall be measured by the maximum number of acres under irrigation by the water user at any time during the year ending March 31, 1971, allowing one acre-foot of surface water annually per acre irrigated.

(d) Notwithstanding the provisions of paragraphs (a), (b) and (c) of this section , there shall be no charge for water made available from storage where: (1) The cost of the storage facility has or will be otherwise paid for by the user, (2) such storage controls a drainage area, and (3) the use does not exceed the yield of such storage without augmentation from other surface water of the basin.

§ 420.24 Effective date of rates.

Rates and charges shall apply to all water users not exempt hereunder on and after the date of the first impoundment of water for water supply purposes at the Beltzville Reservoir (February 8, 1971), or the effective date hereof, whichever is later.

ENTITLEMENT; MEASUREMENT; BILLING

§ 420.31 Certificate of entitlement.

(a) The Executive Director will issue to each known water user a certificate of entitlement within 30 days after the effective date of these regulations subject to the provisions of paragraph (b). In addition, any other water user may apply for a certificate of entitlement at any time. A preliminary notice of entitlement shall be issued to each user. Such entitlement shall become final and take effect, unless the user shall file with the Commission, within 20 days after the service of the notice of entitlement, a request for hearing by the Commission. At such hearing the water user may show cause why the proposed entitlement shall not take effect.

(b) The Executive Director shall schedule a hearing to be held not less than ten days after receipt of a request for a hearing by the Commission. Hearings shall be conducted and the results thereof subject to review in accordance with Article 5 of the Commission's rules of practice and procedure.

(c) A final certificate of entitlement will be issued either upon expiration of the time to request a hearing, where there has been no request, or in accordance with the determination of a hearing where one is held.

(d) A certificate of entitlement is not transferable, except as provided in paragraphs (e) and (f) of this section.

(e) Whenever ownership or possession of land in agricultural use is transferred, a certificate of entitlement with respect to such land shall be deemed to run with the land, so long as the water use continues to be for agricultural irrigation. Upon any such land transfer, the Executive Director will reissue a certificate of entitlement to the new user.

(f) A certificate of entitlement may be transferred in connection with a corporate reorganization within any of the following categories:

(1) Whenever property is transferred to a corporation by one or more persons solely in exchange for stock or securities of the same corporation, provided that immediately after the ex-

change the same person or persons are in control of the transferee corporation, that is, they own 80 percent of the voting stock and 80 percent of all other stock of the corporation.

(2) Whenever the transfer is an incident of a statutory merger or consolidation pursuant to the corporation laws of any state, the District of Columbia or the United States.

(3) Whenever the transfer is included in a transfer by a corporate holder of a certificate of entitlement of all or a part of its assets to another corporation if immediately after the transfer, the transferor or one or more of its stockholders, or any combination thereof, are in control of the corporation to which the assets are transferred, and such transfer is in exchange solely for stocks or securities of the transferee corporation as a party to a reorganization within the meaning of section 354 or section 361 of the Internal Revenue Code.

(4) Where such transfer is required merely as a result of a change of the name, identity, form or place of organization of a corporate holder of a certificate of entitlement.

§ 420.32 Measurement and billing of water taken.

(a) The quantity and volume of waters used by each person shall be determined by meters, or other methods approved by the Commission, installed, maintained and read by or on behalf of the taker. Meters or other methods of measurement shall be subject to approval and inspection by the Commission as to installation, maintenance and reading.

(b) Each user of surface water who is not exceeding the quantity specified in his "certificate of entitlement" shall annually, on or before January 31, file with the Commission, on a form to be prescribed by the Executive Director, a report of the user's physical capability, as defined, permit limitations, and the volume of water used during the preceding year.

(c) Each user of surface water who is taking a quantity of water greater than the amount specified in his "certificate of entitlement" shall report his usage to the Commission on or before April 30, July 31, October 31 and January 31, of each year covering the next preceding calendar quarter, respectively, on forms to be prescribed by the Executive Director. The amount due for water usage in excess of the legal entitlement for each of the first three quarters of a calendar year shall be computed and paid by the user, together with the report.

(d) The Commission will render a statement of the net amount due based on the fourth quarter report, including a negative or positive adjustment, so that the net total billing and payment for four quarters will equal the total water used during the four quarters less the user's legal entitlement, if any.

§ 420.33 Payment of bills.

The amount due for each quarter shall bear interest at the rate of 1 percent per month for each day it is unpaid beginning 30 days after the due date of the quarterly report for the first three quarters and 30 days after the bill is rendered for the fourth quarter.

Charges; Exemptions

§ 420.41 Schedule of water charges.

The Commission will from time to time, after public notice and hearing, make, amend and revise a schedule of water charges. Until changed, the charge for water shall be as follows:

(a) Six cents per thousand gallons for consumptive use; and

(b) Six-tenths of a mill per thousand gallons for nonconsumptive use.

[42 FR 13544, Mar. 11, 1977, as amended at 43 FR 56655, Dec. 4, 1978]

§ 420.42 Contracts; minimum charge.

Subject to the exclusions for certificates of entitlement and exempt uses, the Executive Director may require contracts for any taking, use, withdrawal or diversion of waters of the basin. Each contract shall provide for a minimum annual payment in accordance with an estimated annual demand schedule, regardless of use, withdrawal or diversion. The failure of any person to execute a contract under this section shall not affect the

application of other requirements of this resolution.

§ 420.43 Exempt use.

The following uses shall be exempt from charge:

(a) Non-consumptive uses of less than 1,000 gallons during any day, and less than 100,000 gallons during any quarter.

(b) Ballast water used for shipping purposes.

(c) Water taken, withdrawn or diverted from streams tributary to the river master's gauging station at Montague.

(d) Water taken, withdrawn or diverted below R.M. 38 (the mouth of the Cohansey River) and such proportion of waters taken, diverted or withdrawn above R.M. 38 and below R.M. 92.4 (the mouth of the Schuylkill River) as the Executive Director may determine, on the basis of hydrologic studies, would have no discernible effect upon the maintenance of the salt front below the mouth of the Schuylkill River.

§ 420.44 Cooling water.

Water used exclusively for cooling purposes which is returned to the stream in compliance with the effluent requirements of applicable water quality standards, shall be charged at the non-consumptive use rate except that losses due to in-stream evaporation caused by cooling uses will be charged as consumptive use.

§ 420.45 Historical use.

A person who or which could not for any reason use, take, withdraw or divert waters of the basin from the place in question on March 31, 1971, shall not be entitled to a certificate of entitlement.

Hydroelectric Power Water Use Charges

§ 420.51 Hydroelectric power plant water use charges.

(a) *Annual base charges.* Owners of conventional run-of-river hydroelectric power plants that benefit from water storage facilities owned or partially owned by the Commission shall pay an annual base charge to the Commission. The amount of the base annual charge shall be one dollar per kilowatt of installed capacity.

(b) *Annual variable charges.* In addition to the base charge established in (a) of this section, annual charges based on power generated at each facility will be assessed as follows:

(1) Owners of hydroelectric power plants that benefit from increased hydraulic head available to the hydroelectric project as a result of investments by the Commission shall be charged one mill per kilowatt-hour of energy produced.

(2) Owners of hydroelectric power plants that derive additional benefits from increased flows available to the hydroelectric project that would not have been available without the Commission-sponsored project shall be charged one-half mill per kilowatt-hour of energy produced. No charges for increased flows will be required when charges for increased hydraulic head are in effect.

(3) Charges for the use of any facilities such as pipe conduits, outlet works, and so on, installed in, on or near a Commission-sponsored project that benefit the hydroelectric project in any way will be determined on a case-by-case basis as approved by the Commission.

(c) *Credits.* The owner of any hydroelectric generating facility shall receive a credit against the current year water use fee otherwise payable to the Commission for any amount which the Commission receives from the U.S. Army Corps of Engineers or from the Federal Energy Regulatory Commission for each calendar year.

(d) *Exemptions.* No payment will be required when hydroelectric power facility water use charges would amount to less than $25 per year. Retroactive charges will not be assessed for facilities which have already obtained Commission approval pursuant to Section 3.8 of the Delaware River Basin Compact. All hydroelectric generating projects that do not benefit from storage owned or partially owned by the Commission are exempt from these Commission water charges.

(e) *Payment of bills.* The amount due each year shall bear interest at the rate of 1% per month for each day

it is unpaid beginning 30 days after the due date. Payments are due within 30 days of the end of each calendar year. Annual base charges will be prorated for periods less than a year.

[53 FR 45260, Nov. 9, 1988]

SUBCHAPTER B—SPECIAL REGULATIONS

PART 430—GROUND WATER PROTECTION AREA: PENNSYLVANIA

Sec.

430.1 Policy.
430.3 Purpose.
430.5 Definitions.
430.7 Determination of protected areas and restriction on water use.
430.9 Comprehensive plan policies.
430.11 Advance notice of exploratory drilling.
430.13 Protected area permits for new withdrawals.
430.15 Conservation requirements.
430.17 Registration of existing withdrawals.
430.19 Ground water withdrawal metering, recording, and reporting.
430.21 Protection of existing users.
430.23 Technical determinations and procedures.
430.25 Other permit requirements.
430.27 Emergencies.
430.29 Appeals.
430.31 Sanctions: Civil and criminal.
430.33 Duration.
430.35 Amendments.

AUTHORITY: Pub. L. 87-328 (75 Stat. 688).

SOURCE: 46 FR 24, Jan. 2, 1981, unless otherwise noted.

§ 430.1 Policy.

The provisions of this part implement Commission Resolutions 80-18 and 80-27 relating to ground water protection in southeastern Pennsylvania.

§ 430.3 Purpose.

The purpose of this regulation is to protect the ground water resources in the Triassic lowland and adjacent area of southeastern Pennsylvania and the public interest in those resources. In particular this regulation is to:

(a) Assure the effective management of water withdrawals to avoid depletion of natural stream flows and ground waters and to protect the quality of such water.

(b) Assure that ground water withdrawals are undertaken consistent with the policies stated in the Comprehensive Plan.

(c) Protect the just and equitable interests and rights of present and future lawful users of water resources, giving due regard to the need to balance and reconcile alternative and conflicting uses in view of present and threatened shortages of water of the quality required to serve such uses.

(d) Provide a mechanism for the acquisition of additional information necessary to more accurately plan and manage water resources.

(e) Encourage all water users to adopt and implement reasonable water conservation measures and practices, to assure efficient use of limited water supplies.

§ 430.5 Definitions.

For purposes of this regulation, except as otherwise required by the context:

"Aquifer" means waterbearing formation that contains sufficient ground water to be important as a source of supply.

"Comprehensive Plan" means the plans, policies and programs adopted as part of the Comprehensive Plan of the Delaware Basin in accordance with section 3.2 and Article 13 of the Delaware River Basin Compact.

"Ground water" means all water beneath the surface of the ground.

"Ground water basin" means a subsurface structure having the character of a basin with respect to the collection, retention and outflow of water.

"Ground water protected area" means the areas declared and delineated by the Commission to be a ground water protected area pursuant to Article 10 of the Delaware River Basin Compact and this regulation.

"Ground water recharge" means the addition of water to an aquifer by infiltration of precipitation through the soil, infilitration from surface streams, lakes or reservoirs, flow of ground water from another aquifer, or pumpage of water into the aquifer through wells.

"Project" means the same word as defined by section 1.2(g) of the Delaware River Basin Compact.

"Protected area permit" means a permit to divert or withdraw ground water within the ground water protected area for domestic, municipal,

agricultural or industrial uses, granted pursuant to section 10.3 of the Delaware River Basin Compact and this regulation.

§ 430.7 Determination of protected areas and restriction on water use.

In consideration of the foregoing facts and for the purposes cited above:

(a) The Commission hereby determines and delineates the following area to be a protected area within the meaning and for the purpose of Article 10 of the Delaware River Basin Compact:

SOUTHEASTERN PENNSYLVANIA GROUND WATER PROTECTED AREA

The "Southeastern Pennsylvania Ground Water Protected Area" shall consist of those portions of the following listed counties and political subdivision located within the Delaware Basin:

	Townships
Berks County	Douglass, Hereford, Union.
Bucks County	Bedminster, Buckingham, Doylestown, East Rockhill, Hilltown, Lower Southampton, Middletown, Milford, New Britain, Newtown, Northampton, Plumstead, Richland, Upper Southampton, Warminster, Warrington, Warrick, West Rockhill, Wrightstown.
	Boroughs
	Chalfont, Doylestown, Dublin, Hulmeville, Ivyland, Langhorne, Langhorne Manor, New Britain, Newtown, Penndel, Perkasie, Quakertown, Richlandtown, Sellersville, Silverdale, Telford, Trumbauersville.
	Townships
Chester County	Birmingham, Charlestown, East Coventry, East Bradford, East Goshen, East Pikeland, Easttown, East Vincent, East Whiteland, North Coventry, Schuylkill, South Coventry, Thornbury, Tredyffrin, Warwick, West Bradford, West Goshen, Westtown, Willistown, West Whiteland.
	Boroughs
	Elverson, Malvern, Phoenixville, Spring City, West Chester.
	Townships
Lehigh County	Lower Milford.
Montgomery County	All of the area within the county boundary.

(b) The Commission hereby determines that within the Southeastern Pennsylvania Ground Water Protected Area demands upon available ground water supplies have developed or threaten to develop to such a degree as to create a water shortage or to impair or conflict with the requirements or effectuation of the Comprehensive Plan. Accordingly, no person, firm, corporation or other entity within the area shall withdraw ground water for any purpose at a rate exceeding 10,000 gallons per day, except as prescribed by this regulation.

§ 430.9 Comprehensive plan policies.

The water resources within the Southeastern Pennsylvania Ground Water Protected Area shall be managed consistent with the Comprehensive Plan policies. For purposes of this ground water protected area, section 2.20.4 of the Water Code of the Delaware River Basin shall be applied using the following definition of the term "withdrawal limits":

(a) *Withdrawal limits.* Except as may be otherwise determined by the Commission to be in the public interest, withdrawals from the underground waters of the basin shall be limited to the maximum draft of all withdrawals from a ground water basin, aquifer, or aquifer system that can be sustained without rendering supplies unreliable, causing long-term progressive lowering of ground water levels, water quality degradation, permanent loss of storage capacity, or substantial impact on low flows of perennial streams.

§ 430.11 Advance notice of exploratory drilling.

The Commission encourages consultation with any project sponsor who is considering development of a new or expanded ground water withdrawal that is being planned for any purpose when the daily average withdrawal during any calendar month exceeds 10,000 gallons to insure proper implementation of this regulation and to reduce the possibility of investment in new ground water development facilities which may not be approved hereunder. Such consultation should occur early in the planning stage of a new

project and prior to initiation of exploratory drilling.

(a) Any person, firm corporation or other entity planning a new or expanded ground water withdrawal that may be operated at a daily average withdrawal duing any calendar month in excess of 10,000 gallons shall notify the Executive Director not less than 30 days prior to initiation of exploratory drilling. Such notice shall be in writing and shall specify the location of proposed new facility, the anticipated rate of withdrawal, and the general purpose of the proposed water use. The notice shall also state the location of existing wells within the radius set forth in § 430.21(a).

(b) Whenever the Executive Director shall deem necessary, or upon request of a party proposing a new or expanded withdrawal of ground water, an informal conference may be scheduled to review the nature of the proposed withdrawal, the applicability of the Commission's standards relating to ground water, and the requirements of a protected area permit under this regulation.

§ 430.13 Protected area permits for new withdrawals.

Any person, firm, corporation or other entity who proposes to develop a new ground water withdrawal or expand an existing ground water withdrawal for any purpose within the Southeastern Pennsylvania Ground Water Protected Area shall be required to obtain a protected area permit under this regulation if the proposed new or increased rate of withdrawal from a well or group of wells operated as a system average more than 10,000 gallons per day over a 30-day period. Whenever the Executive Director, upon investigation or upon a reference from a state or federal agency, determines that a new or increased withdrawal from a group of wells within the protected area, whether or not such wells are operated as a system, may have a substantial effect on the water resources of the basin or is likely to have a significant adverse effect on other water uses within the protected area, the Commission may direct a notice to the owners or sponsors of such wells, and require such owners or sponsors to apply for and obtain a protected area permit under this regulation.

(a) Applications for a protected area permit shall be submitted to the Commission on forms approved by the Executive Director. Each application shall be accompanied by the following information:

(1) A map indicating the location of existing wells and perennial streams.

(2) A written report prepared by a hydrogeologist describing the expected effects of the proposed withdrawal on existing wells, flows of perennial streams and the long-term lowering of ground water levels.

(3) A log showing the nature of subsurface material encountered during the construction and installation of the exploratory or production well(s).

(4) The detailed results of extended pump tests, of not less than 48 hours duration, and records of observations during such pump tests from representative monitoring wells.

(b) Applications for a protected area permits whose daily average withdrawal during any calendar month is in excess of 10,000 gallons shall be accompanied by an application fee of $100. Government agencies shall be exempt from such application fee.

(c) If the application for a protected area permit is for a daily average withdrawal during any calendar month in excess of 100,000 gallons, it shall be accompanied by such other information or exhibits required by Article 3 of the Commission's Rules of Practice and Procedure. In such cases, only the application fee required by the Rules will be assessed.

(d) To qualify for approval of a protected area permit, the owner or sponsor of the proposed withdrawal shall demonstrate that:

(1) The proposed withdrawal is consistent with the Commission's Comprehensive Plan and the policies and purposes of these regulations.

(2) Opportunities to satisy water requirements on a timely basis from existing available supplies and facilities have been explored and found infeasible.

(3) The proposed withdrawal, in conjunction with other withdrawals in the applicable ground water basin, will not

exceed withdrawal limits of a ground water basin, aquifer or aquifer system.

(4) The proposed withdrawal will not significantly impair or reduce the flow of perennial streams in the area.

(5) Existing ground and surface water withdrawals will not be adversely impacted, or will be otherwise assured of adequate supplies in accordance with the requirements of § 430.19 of this part.

(6) The proposed withdrawal will not cause substantial, permanent adverse impact to the overlying environment.

(7) The owner or sponsor has adopted and will implement conservation and management programs as required by § 430.15 of this part.

(e) Ground water withdrawals for space heating or cooling purposes that are less than 100,000 gallons per day shall be exempt from obtaining a protected area permit provided that the water withdrawn is returned locally, and to the same ground water basin and aquifer system from which it is withdrawn, undiminished in quantity and quality (except temperature). Ground water withdrawals for space heating or cooling that are subsequently used for commercial or industrial water supply purposes are subject to Commission withdrawal and wastewater discharge regulations. Ground water withdrawals exempted pursuant to this subsection shall be subject to the registration requirements of § 430.17.

(f) All ground water withdrawal projects exempted by subsection "e" above shall be constructed in conformance with accepted industry practice and as a minimum shall comply with the following standards:

(1) All wells shall be drilled by a Pennsylvania licensed well driller and a Water Well Inventory Report shall be completed and filed with the Pennsylvania Department of Environmental Resources (PADER).

(2) No wells shall be located within a 100-year floodway;

(3) All wells shall have top of casing extended a minimum of one foot above the 100-year flood elevation.

(4) All wells shall have the casing protruding a minimum of six inches above the immediate surrounding grade;

(5) The area around all wells or well pits shall be constructed and/or graded to prevent the entrance of surface waters;

(6) All wells shall be accessible for inspection and shall have an access hole for water level measurements;

(7) In order to protect against significant leaks of refrigerant, all ground water heat pump systems shall be equipped with an automatic shutdown device that senses abnormally low or abnormally high refrigerant pressures;

(8) Any drilled well holes that are abandoned shall be sealed with a minimum of ten feet of cement grout. Additional seals may be required to separate different water-bearing zones.

(g) Protected area permits shall be approved or disapproved by the Executive Director with the concurrence of the Pennsylvania member of the Commission or his alternate.

[46 FR 24, Jan. 2, 1981, as amended at 50 FR 5973, Feb. 13, 1985]

§ 430.15 Conservation requirements.

The following conservation requirements shall apply to all existing, new or expanded ground water withdrawals for municipal, public, industrial or commercial water supply whose cumulative daily average withdrawal from one or more wells during any calendar month exceeds 10,000 gallons.

(a) Each person, firm, corporation or other entity withdrawing ground water within the Southeastern Pennsylvania Ground Water Protected Area for purposes of municipal or public water supply shall comply with the following conservation requirements:

(1) Water connections shall be metered, and water charges collected shall be based on metered usage.

(2) A water conservation program shall be initiated and diligently pursued within the service area of the municipal or public water supply. Such program shall include a program for leakage control providing for the monitoring, prevention and repair of significant leakage, and the provision of customer information relating to water-saving devices.

(3) Interconnections with adjacent water systems shall be considered to

assure more reliable supplies of water during emergencies.

(4) A drought emergency plan specifying actions which would be taken to reduce demand and assure supplies to priority uses in the event of drought conditions shall be prepared in cooperation with the municipalities in the service area. The plan shall be filed with the Commission.

(b) Each person, firm, corporation or other entity withdrawing ground water within the Southeastern Pennsylvania Ground Water Protected Area for purposes of industrial or commercial water supply shall comply with the following conservation requirements:

(1) Opportunities for water conservation shall be investigated and all feasible conservation measures shall be implemented at the earliest practicable time.

(2) Water uses shall be monitored, and a systematic process shall be adopted and implemented to provide for the detection and expeditious correction of leakage.

(3) A drought emergency plan specifying the actions to be taken to reduce demand in the event of drought conditions shall be prepared and filed with the Commission.

(c) Permits issued pursuant to these regulations shall be conditioned upon compliance with the requirements of this section.

§ 430.17 Registration of existing withdrawals.

(a) Existing users of ground water within the Southeastern Pennsylvania Ground Water Protected Area whose lawful use commenced prior to the effective date of this regulation, whose cumulative monthly average daily withdrawal from one or more wells exceeds 10,000 gallons and whose withdrawal has not previously been approved by DRBC, pursuant to section 3.8 of the Compact, shall, prior to July 1, 1981, register their use with the Pennsylvania Department of Environmental Resources acting as agent for the Commission. Registration is required as a condition for such existing users being eligible for the protection afforded by this regulation. Such registration shall include withdrawals from quarries that are not fed by surface streams.

(b) Registrations shall be filed on forms approved by the Executive Director of the Commission. Each registrant shall provide, without limitation thereto, the following:

(1) A description of the location, size and depth of each well and the pump facilities installed therein.

(2) The estimated quantity of water withdrawn from each well, or related group of wells, during each month of 1980.

(3) The purposes for which the water is withdrawn, its place of use, and the approximate quantity of water used for each purpose.

(4) The location and method of wastewater disposal and discharge.

(5) A registration fee of $5 for each well.

§ 430.19 Ground water withdrawal metering, recording, and reporting.

(a) Each person, firm, corporation, or other entity whose cumulative daily average withdrawal of ground water from a well or group of wells operated as a system exceeds 10,000 gallons per day during any 30-day period shall meter or measure and record their withdrawals and report such withdrawals to the Pennsylvania Department of Environmental Resources. Withdrawals shall be measured by means of an automatic continuous recording device, flow meter, or other method, and shall be measured to within five percent of actual flow. Meters or other methods of measurement shall be subject to approval and inspection by the Pennsylvania Department of Environmental Resources as to type, method, installation, maintenance, calibration, reading, and accuracy. Withdrawals shall at a minimum be recorded on a daily basis for public water supply use and on a biweekly basis for all other water uses, and reported as monthly totals annually. More frequent recording or reporting may be required by the Pennsylvania Department of Environmental Resources or the Commission.

(b) The following water uses and operations are exempt from the metering or measurement requirements of

paragraph (a): Agricultural irrigation; snowmaking; dewatering incidental to mining and quarrying; dewatering incidental to construction; and space heating or cooling uses that are exempt from permit requirements in § 430.13. Except for space heating and cooling uses described herein, persons engaged in such exempt withdrawals in excess of 10,000 gallons per day during any 30-day period shall record the pumping rates and the dates and elapsed hours of operation of any well or pump used to withdraw ground water, and report such information as required in paragraph (a). Space heating and cooling uses that are exempt from permit requirements in § 430.13 shall also be exempt from the requirement for recording and reporting.

(c) Pursuant to section 11.5 of the Compact, the Pennsylvania Department of Environmental Resources shall administer and enforce a program for metering, recording, and reporting ground-water withdrawals in accordance with this regulation.

(Delaware River Basin Compact, 75 Stat. 688)

[51 FR 25031, July 10, 1986]

§ 430.21 Protection of existing users.

(a) Protected area permits issued under this regulation for new or expanded withdrawals of ground water shall include conditions to protect the owners of existing wells in accordance with the provisions of this section.

(b) Any person, firm, corporation or other entity who commences a new or expanded withdrawal of ground water that is subject to the requirement of a protected area permit under this regulation shall provide mitigating measures if the withdrawal significantly affects or interferes with any existing well. Mitigation measures may consist of:

(1) Providing an alternative water supply, of adequate quantity and quality, to the effected well owner(s);

(2) Providing financial compensation to the affected well owner(s) sufficient to cover the costs of acquiring an alternative water supply of adequate quantity and quality; or

(3) Such other measures as the Commission shall determine to be just and equitable under the circumstances present in the case of any individual application.

[46 FR 24, Jan. 2, 1981. Redesignated at 51 FR 25031, July 10, 1986]

§ 430.23 Technical determinations and procedures.

(a) The radius to be considered in assessing the potential impact of a proposed new or expanded ground water withdrawal, as required by §§ 430.11 and 430.13 of this part shall be as follows:

Quantity of cumulative proposed withdrawal (gpd)	Radius from the proposed withdrawal to be considered (miles)
10,000 to 50,000	0.5
50,000 to 100,000	0.75
In excess of 100,000	1.0

(b) Ground water withdrawal limits, as defined in section 2.20.4 of the Water Code of the Delaware River Basis and § 430.9 of this part, shall be calculated on the basis of the average recharge rate to the basin, aquifer, or aquifer system during repetition of a period which includes the worst recorded drought.

(c) The requirement of paragraph (a) or (b) of this section may be modified or waived by the Executive Director or the Commission if an applicant adopts and implements a program for coordinated use of ground and surface water, and the applicant demonstrates that operation of the coordinated program will be consistent with the policies contained in the Comprehensive Plan and the purposes of these regulations.

[46 FR 24, Jan. 2, 1981. Redesignated at 51 FR 25031, July 10, 1986]

§ 430.25 Other permit requirements.

(a) Except to the extent provided in these regulations, registration of existing ground and surface water withdrawals and the issuance of withdrawal permits hereunder shall not create any private or proprietary rights in the water of the basin and the Commission reserves the right to amend, alter, or repeal these regulations and to amend, alter or rescind any actions

taken hereunder in order to insure the proper control, use and management of the water resources of the basin.

(b) Neither the obligation to obtain a protected area permit under this regulation, nor the receipt thereof, shall relieve the sponsor of a new or expanded ground water withdrawal project of the obligation to obtain any other applicable permits required by Federal, state or local government agencies.

(c) A new or expanded ground water withdrawal subject to the requirement of a protected area permit under this regulation shall not require any further approval by the Commission if the daily average withdrawal during any calendar month is less than 100,000 gallons. If the new or expanded withdrawal exceeds a daily average of 100,000 gallons during any calendar month, the project shall be subject to review and approval by the commission pursuant to section 3.8 of the Delaware River Basin Compact, and the requirement of a protected area permit for such a project shall be in addition to other requirements of the Commission and its Rules of Practice and Procedure.

[46 FR 24, Jan. 2, 1981. Redesignated at 51 FR 25031, July 10, 1986]

§ 430.27 Emergencies.

In the event of an emergency requiring immediate action to protect the public health and safety or to avoid substantial and irreparable injury to any private person or property, and the circumstances do not permit full review and determination in accordance with these regulations, the Executive Director, with the concurrence of the Pennsylvania member of the Commission or his alternate, may issue an emergency permit authorizing an applicant to take such action relating to these regulations as the Executive Director may deem necessary and proper. In such cases, the applicant shall be fully responsible for protecting existing ground water users, as prescribed in § 430.19 of this part. The Executive Director shall report at the next meeting of the Commission on the nature of the emergency and any action taken under this section.

[47 FR 21776, May 20, 1982. Redesignated at 51 FR 25031, July 10, 1986]

§ 430.29 Appeals.

Any person aggrieved by any action or decision of the Executive Director taken under these regulations shall be entitled upon timely filing of a request therefor, to a hearing in accordance with Article 6 of the Commission's Rules of Practice and Procedure.

[46 FR 24, Jan. 2, 1981. Redesignated at 51 FR 25031, July 10, 1986]

§ 430.31 Sanctions: Civil and criminal.

(a) Any person, association, corporation, public or private entity who or which violates or attempts or conspires to violate any provision of this regulation, or any order, regulation or permit issued in furtherance thereof, shall be punishable as provided in section 14.17 of the Compact.

(b) General Counsel of the Commission may, in his discretion, request the appropriate law enforcement officers of the Commonwealth of Pennsylvania to prosecute any or all violations of this regulation in accordance with the Compact and the laws of the Commonwealth, and for recovery of the fines fixed by section 14.17 of the Compact, in the name and on behalf of the Commission. The Commonwealth of Pennsylvania and its law enforcement officers are hereby requested pursuant to sections 10.1 and 11.5 of the Compact, to provide such technical, professional and administrative services as may be required for such enforcement.

(c) In addition to such penal sanctions as may be imposed pursuant to this section, any violation of this regulation shall be subject to such civil remedies by injunction and otherwise as provided by law.

[46 FR 24, Jan. 2, 1981. Redesignated at 51 FR 25031, July 10, 1986]

§ 430.33 Duration.

The delineation and declaration of the Southeastern Pennsylvania Ground Water Protected Area made pursuant to this regulation, and the requirements established hereby, shall continue until terminated by specific action of the Commission.

[46 FR 24, Jan. 2, 1981. Redesignated at 51 FR 25031, July 10, 1986]

§ 430.35 Amendments.

Upon request by any interested party, or on its own motion, the Commission may consider amendment of this regulation, and modify the geographic boundaries of the protected area, in accordance with Article 10 of the Compact.

[46 FR 24, Jan. 2, 1981. Redesignated at 51 FR 25031, July 10, 1986]

CHAPTER VI--WATER RESOURCES COUNCIL

Part		Page
701	Council organization	56
704	Plan formulation standards and procedures	71
705	Nondiscrimination in federally-assisted programs—effectuation of Title VI of the Civil Rights Act of 1964	71
706	Employee responsibilities and conduct	79
707	Compliance with the National Environmental Policy Act (NEPA)	87
708	Upper Mississippi River Basin Commission: Public participation in Upper Mississippi River System Master Plan	91
725	Implementation of Executive Orders 11988, Floodplain Management and 11990, Protection of Wetlands	95
740	State water management planning program	98

PART 701—COUNCIL ORGANIZATION

Subpart A—Introduction

Sec.

701.1 General.
701.2 Creation and basic authority.
701.3 Purpose of the Water Resources Council.
701.4 Functions.
701.5 Organization pattern.
701.6 Location of office.

Subpart B—Headquarters Organization

701.51 The Council.
701.52 Definitions.
701.53 Council decisions by Members.
701.54 Interagency Liaison Committee.
701.55 Associate Members.
701.56 Observers.
701.57 Official decisions of the Council.
701.58 Task forces.
701.59 Advisory committees.
701.60 Procedures for revision of rules and regulations.
701.71 The Chairman.
701.76 The Water Resources Council Staff.
701.77 Director—duties and responsibilities.
701.78 Director—delegation of authorities.
701.79 Selection policy for professional personnel.

Subpart C—Field Organization

701.100 Field Directors.
701.101 Field committees.
701.102 Existing committees.

Subpart D—Availability of Information

701.200 Statement of policy.
701.201 Availability of records and informational materials.
701.202 Procedure for requests for information.
701.203 Schedule of fees.
701.204 Time limits for WRC initial determinations regarding requests for information.
701.205 Time limit for requester to appeal an initial adverse determination.
701.206 Time limits for WRC final determinations regarding requests for information appealed by the requester from an initial adverse determination.
701.207 Extension of time limits for WRC initial and final determinations.
701.208 WRC petition for judicial extension of time.
701.209 River basin commissions and field committees.

Sec.

Subpart E—Protection of Privacy

701.300 Purpose and scope.
701.301 Definitions.
701.302 Procedures for notification of existence of records pertaining to individuals.
701.303 Conditions of disclosure.
701.304 Procedures for identification of individuals making requests.
701.305 Procedures for requests for access to or disclosure of records pertaining to individuals.
701.306 Special procedure: Medical records.
701.307 Requests for correction or amendment to record.
701.308 Council review of request for correction or amendment of record.
701.309 Appeal of initial adverse determination.
701.310 Disclosure of record to person other than the individual to whom it pertains.
701.311 Accounting for disclosures.
701.312 Fees.
701.313 Penalties.
701.314 Exemptions.

AUTHORITY: Sec. 402, Pub. L. 89–80; 79 Stat. 244, as amended (42 U.S.C. 1962-1962d-5), unless otherwise noted.

Subpart A—Introduction

SOURCE: 43 FR 25944, June 15, 1978, unless otherwise noted.

§ 701.1 General.

This part describes the organization established by the Water Resources Council in discharging its duties and responsibilities. The organization is designed to assure that Council Members will meet at least quarterly and consider and decide major matters before the Council. It provides that the Director can take action when necessary and appropriate; provided, that in the preparation of agenda items for the Council meetings, the Director shall consult with the Interagency Liaison Committee. It also provides that the Council Members shall be continuously advised of the significant actions of the Council staff. Council Members expect to participate personally in the work of the Council.

§ 701.2 Creation and basic authority.

The Water Resources Council was established by the Water Resources Planning Act of 1965 (Pub. L. 89–80, 79

Stat. 244, as amended (42 U.S.C. 1962-1962d-5)). The rules and regulations of this part are promulgated by authority of section 402 of the Act (42 U.S.C. 1962d-1).

[41 FR 20548, May 19, 1976]

§ 701.3 Purpose of the Water Resources Council.

It is the purpose of the Water Resources Council to effectuate the policy of the United States in the Water Resources Planning Act (hereinafter the Act) to encourage the conservation, development, and utilization of water and related land resources of the United States on a comprehensive and coordinated basis by the Federal Government, States, localities, and private enterprise with the cooperation of all affected Federal agencies, States, local governments, individuals, corporations, business enterprises, and others concerned, within the limitations set forth in section 3 of the Act (42 U.S.C. 1962-1).

§ 701.4 Functions.

The functions of the Water Resources Council are:

(a) To maintain a continuing study and prepare periodically an assessment of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and of the national interest therein.

(b) To maintain a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation.

(c) To appraise the adequacy of administrative and statutory means for coordination and implementation of the water and related land resources policies and programs of the several Federal agencies and to make recommendations to the President with respect to Federal policies and programs.

(d) To establish, after consultation with appropriate interested Federal and non-Federal entities, and with approval of the President, principles, standards, and procedures for Federal participation in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of Federal water and related land resources projects, including primary direct navigation benefits as defined by section 7a, Pub. L. 89-670.

(e) To coordinate schedules, budgets, and programs of Federal agencies in comprehensive interagency regional or river basin planning.

(f) To carry out its responsibilities under Title II of the Act with regard to the creation, operation, and termination of Federal-State river basin commissions.

(g) To receive plans or revisions thereof submitted by river basin commissions in accordance with section 204(3) of the Act (42 U.S.C. 1962b(3)), and to review and transmit them, together with its recommendations, to the President in accordance with section 104 of the Act (42 U.S.C. 1962a-3).

(h) To assist the States financially in developing and participating in the development of comprehensive water and related land resources plans in accordance with Title III of the Act.

(i) To perform such other functions as the Council may be authorized by law, executive orders, regulations, or other appropriate instructions to perform.

(j) To take such actions as are necessary and proper to implement the Act and to carry out the functions enumerated herein.

§ 701.5 Organization pattern.

(a) The Office of the Water Resources Council is composed of the Water Resources Council, the Chairman of the Water Resources Council, the Water Resources Council Staff headed by a Director, and Field Organizations within its jurisdiction.

(b) The Water Resources Council consists of the following Members: The Secretary of Agriculture; the Secretary of the Army; the Secretary of Commerce; the Secretary of Energy; the Secretary of Housing and Urban Development; the Secretary of the Interior; the Secretary of Transportation; and the Administrator of the Environmental Protection Agency.

(c) The Chairman of the Council is designated by the President.

(d) The Water Resources Council staff is employed, assigned duties and

30-060 O—89——3

responsibilities, and supervised by the Director.

(e) The Council Members shall establish an Interagency Liaison Committee. Task forces may be established and assigned duties by the Director with the concurrence of the Members, and/or action of the Council. Any Council Member may provide each task force with whatever representation he or she deems necessary.

(f) Field organizations are established by or operate under the Council and include field committees formerly under the Inter-Agency Committee on Water Resources and the offices of the Chairmen of Federal-State River Basin Commissions established under Title II of the Act.

§ 701.6 Location of office.

The Headquarters is located in the Washington, D.C. area.

Subpart B—Headquarters Organization

SOURCE: 43 FR 25945, June 15, 1978, unless otherwise noted.

§ 701.51 The Council.

Decisions of the Council are made as hereinafter described in §§ 701.53 and 701.54.

§ 701.52 Definitions.

As used in this part the term "Member" means the Secretary of Agriculture, the Secretary of the Army, the Secretary of Commerce, the Secretary of Energy, the Secretary of Housing and Urban Development, the Secretary of the Interior, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency, or Alternate appointed in accordance with § 701.53(a) when the alternate is acting for one of the above-named.

§ 701.53 Council decisions by Members.

Council decisions by Members may be made by direct vote at Council meetings or by a written communication which may provide for either a written or telephone response. Written communications shall state the time limit for voting on issues which they contain; however, extensions of time may be granted by the Director or Chairman when it is deemed necessary. Issues raised at Council meetings shall be decided by majority vote of Members present and voting. Issues identified in written communications must receive approval of all Members. If an action item does not receive approval of all Members, it will be considered as an agenda item at the next Council meeting. For purposes of this section, approval of all Members shall be defined as approval without a negative vote within the time limit for voting provided within each action memorandum. Decisions affecting the authority or responsibility of a Member, within the meaning of section 3(b) of the Act, (42 U.S.C. 1962-1(b)), can be made only with that Member's concurrence.

(a) Each of the Members in § 701.5(b) shall designate in writing to the Chairman, with a copy to the Director, those individuals who may act as their Alternates in fulfilling the duties as a Member. Each Member shall designate one Alternate and one second Alternate to represent the Member on the Council.

(b) A quorum for the transaction of business at Council meetings shall consist of five or more Members and a majority shall consist of at least four votes.

(c) Each Member has equal responsibility and authority in all decisions and actions of the Council. Each Member may place an item on a meeting agenda or, acting through the Director, circulate in writing an item for Council action. Each Member, as well as each Associate Member and each Observer, shall have full access to all information relating to the performance of his duties and responsibilities.

(d) No vote shall be taken at Council meetings until each Member and Associate Member present has had full opportunity to express his views.

(e) Members shall meet regularly at least quarterly, upon the call of the Chairman, or when requested by a majority of Members.

(f) Matters specifically reserved for Council decision by Members are:

(1) Actions requiring Presidential action or approval.

(2) Approval of Annual Budget requests and the Annual Operating Program of the Office of the Water Resources Council.

(3) Decisions involving substantial policy issues.

(4) Delegations of authority.

(5) Determination that testimony taken or evidence received shall be taken under oath.

(6) Issuance of invitations to become Associate Members or Observers.

(7) Appointment and termination of the appointment of the Director.

[43 FR 25945, June 15, 1978, as amended at 45 FR 24460, Apr. 10, 1980]

§ 701.54 Interagency Liaison Committee.

There is established within the Council an Interagency Liaison Committee (hereafter referred to as ILC).

(a) The ILC shall be composed of one representative for each Member, Associate Member, and Observer. Additional agency representatives may participate in the ILC meeting whenever necessary.

(b) The chairmanship of the ILC shall rotate quarterly among the Members' representatives. Secretarial assistance shall be the responsibility of the ILC Chairman.

(c) The function of the ILC will be to provide a forum for discussion of agenda items prior to Council meetings to advise the Director of the Members' views on such agenda items, and with the Director, to develop the final agenda. It shall be the duty of the Director or his representative to brief the ILC on each agenda item at these meetings.

(d) The ILC may meet at other times upon the call of the Chairman or Director, to consider other items.

(e) Draft agenda items shall be submitted to ILC representatives at least 30 days prior to the Council meeting. The ILC shall meet at least 20 days prior to the Council meeting. Final Council agenda material shall be submitted to the Members at least 7 days prior to the Council meeting.

(f) All ILC meetings will be open except when privileged information is discussed. At such meetings only representatives of Members shall be present.

[43 FR 25945, June 15, 1978, as amended at 45 FR 58834, Sept. 5, 1980]

§ 701.55 Associate Members.

(a) The Chairman, with concurrence of the Council, may invite the heads of other Federal agencies having authorities and responsibilites relating to the work of the Council to become Associate Members. Associate Members, on the same terms and conditions as Members, may designate persons, in accordance with the same procedure identified in § 701.53(a), to serve for them as Associate Members.

(b) Associate Members may participate with Members in consideration of all matters relating to their areas of responsibility, except that their concurrence on a decision of the Council is not required.

§ 701.56 Observers.

(a) Chairmen and Vice-Chairmen of River Basin Commissions established under Title II of the Act shall be Observers.

(b) The Chairman, with the concurrence of the Council, may invite the heads of offices or other officials of the Executive Office of the President or other Federal agencies to become Observers.

(c) Observers may designate persons to attend Council meetings of Members. Observers will be furnished agenda and other materials on the same basis as Associate Members.

§ 701.57 Official decisions of the Council.

Official decisions of the Council shall be of record. Such decisions shall be recorded in accepted minutes of duly called regular or special meetings or set forth in resolutions, memoranda, or other documents approved by Members. Decisions which would affect the authority and responsibilities of heads of other Federal agencies, including Associate Members, within the meaning of section 3(b) of the Act, shall only be made during a regular or special meeting of Members and recorded in the minutes thereof.

§ 701.58 Task forces.

The Director with Council concurrence or the Council may establish

task forces from time to time to aid in the preparation of issues for presentation to the Council.

(a) Any Member, Associate Member, or Observer may provide representation on each task force.

(b) The Director or the Council may designate the chairman of each task force.

(c) For each task force, the Director or the Council shall set forth the purpose and specific functions of each task force and their termination dates in establishing such task forces. Such charter documents shall also identify the relationship of each task force to functions of the Council.

(d) Each duly constituted task force will be provided administrative and secretarial support by the Water Resources Council Staff to the extent possible, directly or through arrangements with other Federal agencies.

§ 701.59 Advisory committees.

The Council may establish standing and ad hoc advisory committees. The establishment, operation, and termination of such committees shall be in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) and other pertinent law and directives.

§ 701.60 Procedures for revision of rules and regulations.

Revisions proposed by the Water Resources Council Members to the Principles and Standards Manual of Procedures promulgated as rules and regulations by the Water Resources Council are to be submitted in writing by one or more Members of the Water Resouces Council to the Director, Water Resources Council, to be handled as an action item in accordance with § 701.53. Proposed revisons adopted by the Council in accordance with § 701.53 will be published in the FEDERAL REGISTER as proposed interim, or final changes. Proposed or interim changes shall be subject to a minimum 60-day public comment period; after the comment period, the Water Resources Council will publich notice that the revision is final as written or as changed to reflect comment or is revoked. Final changes will not be subject to a public comment period following publication in the FEDERAL REGISTER and will become effective when published or at specified data.

[44 FR 72584, Dec. 14, 1979]

§ 701.71 The Chairman.

(a) The Chairman shall preside at Council Meetings of Members.

(b) The Chairman is the official spokesman of the Council and represents it in its relations with the Congress, the States, Federal agencies, persons, or the public. He shall from time to time report, on behalf of the Council, to the President. He shall keep the Council apprised of his actions under this section.

(c) The Chairman shall request the heads of other Federal agencies to participate with the Council when matters affecting their responsibilities are considered by the Council.

(d) In the case of absence, disability, or vacancy, the acting Chairman shall be, in order of precedence, as designated (1) by the President (2) by the Chairman from among the Members, or (3) by the Council from among the Members.

§ 701.76 The Water Resources Council Staff.

The Water Resources Council Staff (hereinafter the Staff) serves the Council and the Chairman in the performance of their functions and in the exercise of their authorities in accordance with the Act, the rules and regulations and other decisions of the Council, and all other laws, rules, regulations, and orders applicable to the Water Resources Council, and will be organized in accordance with a structure approved by the Council.

§ 701.77 Director—duties and responsibilities.

The Director shall serve as the principal executive officer for the Council and as the head of the staff, and shall see to the faithful execution of the policies, programs, and decisions of the Council; report thereon to the Council from time to time or as the Council may direct; administer the office and staff of the Council within the limits of the Annual Budget and the Annual Operating Program related thereto; make recommendations to

the Council and the Chairman relating to the performance of their functions and the exercise of their authorities; and facilitate the work of the Council and the Chairman. His duties and responsibilities include, but are not limited to, the following:

(a) Acting for the Chairman, represents the Council in its relations with the Congress, States, Federal agencies, persons, or the public under the general supervision and direction of the Council.

(b) Establishes the line of succession as Acting Director among the other officers of the Council below the Deputy Director.

(c) Directs the Staff in its service to the Council and the Chairman in the performance of their functions and in the exercise of their authorities. The Director is responsible to the council for the organization of the Staff, employment and discharge of personnel, training and personnel development program, assignment of duties and responsibilities, and the conduct of its work.

(d) Insures that the quality of the work of the Staff in its studies, reports, and in other assignments is high that the professional integrity of its personnel is respected, and that its overall perspective and independence of judgment with regard to water and related land resources matters is approximately maintained within the context of the inter-agency, intergovernmental, and other staff collaboration that is both necessary and desirable in the fulfillment of the purpose of the Council as set forth in § 701.3.

(e) Prepares and recommends reports on legislation, Executive orders, and other documents requested of the Council.

(f) Prepares and recommends an Annual Budget request in accordance with policies, rules, and regulations applicable thereto. During its consideration by the Office of Management and Budget the President and the Congress, the Director shall seek acceptance of the proposed Annual Budget by every appropriate means. On behalf of the Council, he is authorized in his descretion to make appeals and agree to adjustments. However, to the extent that time and circumstances permit, he shall consult with and obtain the approval of the Council on all substantial appeals and adjustments.

(g) Prepares and recommends the Annual Operating Program to carry out the work of the Council, within the appropriations provided by the Congress and allowances approved by the Office of Management and Budget.

(h) Prepares and recommends proposed rules and regulations, including proposed delegations of authority, for carrying out the provisions of the Act, or other provisions of law which are administered by the Council.

(i) Prepares and recommends reports and materials for public information that are explanatory of the work and accomplishments of the Council.

(j) Appoints staff representatives to each task force established pursuant to § 701.58.

(k) Establishes and enforces administrative rules and regulations pertaining to the Staff consistent with applicable laws, Executive Orders, Budget Circulars, and other regulations and orders.

§ 701.78 Director—delegation of authorities.

(a) Under the authority of section 403 of the Act (42 U.S.C. 1962d-2), the Director is delegated authority to:

(1) Hold hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reprints thereon as he may deem advisable.

(2) Acquire, furnish, and equip such office space as is necessary.

(3) Use the U.S. mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(4) Employ and fix compensation of all personnel as the Director deems advisable in accordance with the civil service laws and the Classification Act of 1949, as amended; assign duties and responsibilities among such personnel and supervise personnel so employed.

(5) Procure services as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 3109), at rates not in excess

of the daily equivalent of the rate prescribed for grade GS-18 under section 5332 of Title 5 of the United States Code in the case of individual experts or consultants.

(6) Purchase, hire, operate, and maintain passenger motor vehicles.

(7) Utilize and expend such funds as are deemed advisable for proper administration of the authorities delegated herein. However, contract and individual modifications there of in excess of $100,000 or which involve significant policy decisions shall be submitted to the Council for approval before execution.

(8) Request any Federal department or agency (i) to furnish to the Council such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and (ii) to detail personnel to temporary duty with the Council on a reimbursable basis.

(9) Make available for public inspection during ordinary office hours all appropriate records and papers of the Council.

(10) Compute and certify for payment funds to the States in accordance with standards and formula approved by the Council, and perform related functions of the Council contained in section 305 of the Act.

(11) Serve as a duly authorized representative of the Chairman of the Council for the purpose of audit and examination of any pertinent books, documents, papers, and records of the recipient of a grant under Title III of the Act, and recommend to the Chairman the appointment of further representatives as may be necessary for such function.

(12) Review, for compliance, State programs approved under Title III; conduct full inquiries as the Council may direct; and recommend for Council decision such withholding or reinstatement of payments as is appropriate and authorized by section 304 of the Act.

(13) Serve as the "responsible agency official" under Part 705 of these rules and regulations.

(b) The authorities delegated in this section may be redelegated by the Director to the extent determined by him to be necessary and desirable for proper administration.

§ 701.79 Selection policy for professional personnel.

In the selection for employment of the professional staff as a whole, the Director shall be guided by the following criteria:

(a) Outstanding character and competence—both personal and professional.

(b) Spread and balance of training and experience in the several relevant professions—ecology; economics; economic geography; engineering; fish and wildlife biology; forestry; hydrology; irrigation; landscape architecture; law; political science; recreation; sanitary engineering; soil conservation; urban and other land planning; etc.

(c) Diversity of prior identification and experience, both planning and operating in Washington and in the field; including personnel with prior identification and experience with Federal, State, or local government, private enterprise, or university teaching and research.

Subpart C—Field Organization

SOURCE: 39 FR 20590, June 12, 1974, unless otherwise noted.

§ 701.100 Field Directors.

The Council may employ as professional staff Field Directors who shall be designated as chairmen of committees or groups established by the Council to develop and prepare regional or river basin assessments or plans. Such Field Directors shall perform their official functions at locations established by the Council.

§ 701.101 Field committees.

The Council may establish or continue already established regional committees to carry out assigned functions at field level.

§ 701.102 Existing committees.

Field Committees operating under the Water Resources Council (formerly under the Inter-Agency Committee on Water Resources) are as follows:

Pacific Southwest Inter-Agency Committee
Arkansas-White-Red Inter-Agency Committee
Southeast Basins Inter-Agency Committee

Subpart D—Availability of Information

AUTHORITY: 5 U.S.C. 552 as amended by Pub. L. 93-502, 88 Stat. 1561; 42 U.S.C. 1962d-1.

SOURCE: 40 FR 7253, Feb. 19, 1975, unless otherwise noted.

§ 701.200 Statement of policy.

Water Resources Council records and informational materials are available to the fullest extent possible consistent with 5 U.S.C. section 552, as amended, and will be promptly furnished to any member of the public.

§ 701.201 Availability of records and informational materials.

(a) Except for records and materials exempted from disclosure pursuant to paragraph (b) of this section, any person may inspect and copy any document in the possession and custody of the Water Resources Council in accordance with the procedure provided in § 701.202.

(b) The provisions of 5 U.S.C. section 552 which require that agencies make their records available for public inspection and copying do not apply to matters which are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

§ 701.202 Procedure for requests for information.

(a) A member of the public who requests records or materials from the Water Resources Council must provide a reasonable description of the records or materials sought so that such records or materials may be located without undue search or inquiry.

(b) Requests which reasonably describe the records or materials sought should be directed to the Public Information Officer, Water Resources Council, Suite 800, 2120 L Street NW., Washington, D.C. 20037.

(c) To insure that requests for information are processed as expeditiously as possible, all Freedom of Information Act (FOIA) requests should be

clearly identified by the requester as such on the envelope and in the letter.

(d) Records or materials will be available for inspection and copying in person during normal business hours or by mail.

(e) Requests for records which originate in or concern matters which originate in another department or agency may be forwarded to the department or agency primarily concerned and the requester so notified.

§ 701.203 Schedule of fees.

(a) The Public Information Officer will to the extent practicable, encourage the widest possible distribution of information by permitting requests for inspection or copies of records or materials to be met without cost to the person making the request.

(b) Fees will be charged in the case of requests which are determined by the Public Information Officer to involve a burden on staff or facilities significantly in excess of that normally accepted by the Council in handling routine requests for information.

(c) In all instances where the Public Information Officer determines that a request for information can be considered as primarily benefiting the general public (despite a § 701.203 determination of burden), such request shall be met either without cost wherever practicable or at a reduced cost to the requester. Any such reduction shall be determined by the Public Information Officer on the basis of the balance between the benefit to the general public and the cost to the Water Resources Council.

(d) Fees shall be limited to recovery of only direct costs of search and duplication but in no event shall the fee for search and duplication exceed $2.50 per half hour, nor shall the fee for copying exceed $0.25 per page (maximum per page dimension of 8 × 14 inches).

(e) Unless a request for information specifically states that whatever cost is involved will be acceptable, or acceptable up to a specified limit that covers anticipated costs, a request that is expected to involve an assessed fee in excess of $50.00 will not be deemed to have been received until the requester is advised promptly upon physical receipt of the request of the anticipated cost and agrees to bear it.

(f) When anticipated fees exceed $50.00, a deposit for 25% of the amount must be made within 10 days of the notice to the requester of the initial determination.

(g) The Council reserves the right to limit the number of copies of any document that will be provided to any one person.

§ 701.204 Time limits for WRC initial determinations regarding requests for information.

(a) An initial determination to grant or deny each request for information will be made within ten (10) working days of receipt of such request.

(b) The requester shall be notified immediately of the initial determination and the reasons therefor.

(c) The Public Information Officer will make initial determinations to grant requests for information.

(1) In those instances where the initial determination by the Public Information Officer is to grant the request and the information is immediately supplied such action will serve as both notice of determination and compliance with the request.

(2) In those instances where the initial determination by the Public Information Officer is to grant the request, but the information is not immediately available, the Public Information Officer will send immediate notice of the determination to comply, and the approximate date the information will be forwarded.

(d) The Public Information Officer will make initial determination to deny the requests only with the concurrence of the General Counsel. The requester shall be notified immediately of the initial adverse determination, the reasons therefor, and the right to appeal the initial adverse determination to the Director.

§ 701.205 Time limit for requester to appeal an initial adverse determination.

(a) The requester shall have thirty (30) calendar days to file with the Director an appeal from an initial ad-

verse determination. The appeal must be in writing.

(b) The thirty (30) day period of appeal shall run from receipt of the initial adverse determination (in cases of denials of an entire request) and from receipt of any records being made available pursuant to the initial adverse determination (in cases of partial denials).

§ 701.206 Time limit for WRC final determinations regarding requests for information appealed by the requester from an initial adverse determination.

The Director shall make a final determination with respect to any appeal within twenty (20) working days after receipt of such appeal. If the initial adverse determination is in whole or in part upheld by the Director, the requester shall be notified of the final adverse determination and the provisions for judicial review of that determination as stated in the Freedom of Information Act, as amended (see 5 U.S.C. 552(a)(4) *et seq.*; as amended by Pub. L. 93-502).

§ 701.207 Extension of time limits for WRC initial and final determinations.

(a) In unusual circumstances, as specified in this section, the time limits prescribed in either § 701.203 or § 701.204 may be extended by written notice from the responsible WRC official (i.e., the Public Information Officer in instances of initial requests and the Director in instances of appeals) to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten (10) working days, and in no event shall the total extended time exceed ten (10) working days with respect to a particular request.

(b) As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

§ 701.208 WRC petition for judicial extension of time.

The provisions of § 701.206 notwithstanding, the Director may petition for judicial extension of time when exceptional circumstances warrant such action.

§ 701.209 River basin commissions and field committees.

(a) River basin commissions established pursuant to Title II of the Water Resources Planning Act are encouraged to establish, pursuant to section 205(c) of that Act, procedures for public availability of information that are consistent with 5 U.S.C. 552, as amended, and this subpart.

(b) Field committees will be governed by the procedures adopted by the lead Federal agency to implement 5 U.S.C. 552, as amended; except that if the lead agency of a field committee is a non-Federal entity, the standards of this subpart shall apply.

(c) Requests for documents and informational materials may be made to the chairmen of the field committees and river basin commissions at the following addresses.

(1) River Basin Commissions:

Great Lakes Basin Commission, P.O. Box 999, Ann Arbor, Michigan 48106;

New England River Basins Commission, 55 Court Street, Boston, Massachusetts 02108;

Ohio River Basin Commission, 36 East 4th Street, Suite 208-220, Cincinnati, Ohio 45202;

Pacific Northwest River Basins Commission, P.O. Box 908, Vancouver, Washington 98660;

Upper Mississippi River Basin Commission, Federal Office Building, Room 510, Fort Snelling, Twin Cities, Minnesota 55111;

Missouri River Basin Commission, 10050 Regency Circle, Suite 403 Omaha, Nebraska 68114.

(2) Field Committees:

Arkansas-White-Red Inter-Agency Committee, Room 4030, Federal Building, Albuquerque, New Mexico 87101;
Pacific Southwest Inter-Agency Committee, 630 Sansome Street, Room 1216, San Francisco, California 94111;
Southeast Basins Inter-Agency Committee, 402 New Walton Building, Atlanta, Georgia 30303.

[40 FR 7253, Feb. 19, 1975, as amended at 40 FR 10663, Mar. 7, 1975]

Subpart E—Protection of Privacy

AUTHORITY: Sec. 402, Water Resources Planning Act of 1965 (Sec. 402, Pub. L. 89-80; 79 Stat. 254, as amended (42 U.S.C. 1962d-1)) and the Privacy Act of 1974 (Pub. L. 93-579; 88 Stat. 1896 (5 U.S.C. 552a)).

SOURCE: 40 FR 45676, Oct. 2, 1975, unless otherwise noted.

§ 701.300 Purpose and scope.

(a) The purpose of this subpart is to set forth rules to inform the public about information maintained by the U.S. Water Resources Council relating to identifiable individuals and to inform those individuals how they may gain access to and correct or amend information about themselves.

(b) The regulations in this subpart implement the requirements of the Privacy Act of 1974 (Pub. L. 93-579; 88 Stat. 1896 (5 U.S.C. 552a)).

(c) The regulations in this subpart apply only to records disclosed or requested under the Privacy Act of 1974, and not requests for information made pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552, as amended by Pub. L. 93-502).

§ 701.301 Definitions.

For the purposes of this subpart, unless otherwise required by the context:

(a) "Council" means the U.S. Water Resources Council;

(b) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent resident;

(c) "Maintain" means maintain, collect, use or disseminate;

(d) "Record" means any item, collection, or grouping of information about an individual that is maintained by the Council, including, but not limited to, his education, financial transactions, medical history and criminal or employment history, and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(e) "Adverse determination" means a decision by the proper Council official to deny, in whole or in part, a request from an individual for a correction or amendment of a record concerning the individual and maintained by the Council; and

(f) "Record system" means "system of records" as defined in the Act, i.e., a group of any records under the control of the Council from which information is retrieved by the name of the individual or by some identifying particular assigned to the individual.

§ 701.302 Procedures for notification of existence of records pertaining to individuals.

(a) The systems of records, as defined in the Privacy Act of 1974, maintained by the Council are listed annually in the FEDERAL REGISTER as required by that Act. Any individual may request the Council to inform him or her whether a particular record system named by the individual contains a record pertaining to him or her. The request may be made in person during business hours or in writing at the location and to the person specified in the notice describing that record system.

(b) An individual who believes that the Council maintains records pertaining to him or her but who cannot determine which records system contains those records, may request assistance by mail or in person at the Division of Program Coordination and Management, 2120 L Street, NW., Washington, D.C. 20037, during business hours (8:00 A.M. through 4:30 P.M., Monday through Friday, excluding legal holidays).

(c) The Council will attempt to respond to a request as to whether a record exists within 10 working days from the time it receives the request

or to inform the requestor of the need for additional time or additional information within 10 working days. If a request is complied with within 10 working days, no separate acknowledgment will be made.

[40 FR 45676, Oct. 2, 1975, as amended at 41 FR 8343, Feb. 26, 1976]

§ 701.303 Conditions of disclosure.

(a) Subject to the conditions of paragraphs (b) and (c) of this section, the Council will not disclose any record which is contained in a system of records, by any means of communication to any person who is not an individual to whom the record pertains.

(b) Upon written request or with prior written consent of the individual to whom the record pertains, the Council may disclose any such record to any person or other agency.

(c) In the absence of a written consent from the individual to whom the record pertains, the Council may disclose any such record provided such disclosure is:

(1) To those officers and employees of the Council who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (5 U.S.C. 552);

(3) For a routine use compatible with the purpose for which it was collected;

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the Council with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity authorized by law: *Provided*, The head of the agency or instrumentality has made a prior written request to the Assistant Director Program Coordination and Management specifying the particular record and the law enforcement activity for which it is sought;

(8) To a person pursuant to a showing of compelling circumstance affecting the health or safety of an individual: *Provided*, That upon such disclosure notification is transmitted to the last known address of such individual (and see § 701.306);

(9) To either House of Congress, and to the extent of a matter within its jurisdiction, any committee or subcommittee, or joint committee of Congress;

(10) To the Comptroller General, or any of his authorized representatives in the course of the performance of the duties of the GAO; or

(11) Under an order of a court of competent jurisdiction.

§ 701.304 Procedures for identification of individuals making requests.

(a) Each individual requesting the disclosure of a record or copy of a record will furnish the following information with his or her request:

(1) The name of the record system containing the record;

(2) Proof as described in paragraph (b) of this section that he or she is the individual to whom the requested record relates; and

(3) Any other information required by the notice describing the record system.

(b) Proof of identity as required by paragraph (a)(2) of this section will be provided as described in paragraph (b)(1) and (2) of this section. Requests made by an agent, parent, or guardian will include the authorization described in § 701.310(a) and (b).

(1) Requests made in writing will include a statement, signed by the individual and properly notarized, that he or she appeared before a notary public and submitted proof of identification in the form of a drivers license, birth certificate, passport or other identifi-

cation acceptable to the notary public. In any case in which, because of the extreme sensitivity of the record sought to be seen or copied, the agency determines that the identification is not adequate, it may request the individual to submit additional proof of identification.

(2) If the request is made in person, the requester will submit proof of identification similar to that described in paragraph (b)(1) of this section, acceptable to the Council.

[41 FR 8343, Feb. 26, 1976]

§ 701.305 Procedures for requests for access to or disclosure of records pertaining to individuals.

(a) After being informed by the Council that a system of records contains a record pertaining to him or her, an individual may request the Council for access to or disclosure of that record to him or her in the manner described in this section. Each such request of a record or a copy of it will be made at the place specified in the notice describing that system of records, either in writing or in person. Requests may be made by agents, parents, or guardians of individuals as described in § 701.310(a) and (b).

(b) The request for access to or disclosure of a record should specifically identify the systems of records involved.

(c) The Council will attempt to affirm or deny a request within 10 working days from the time it receives the request or to inform the requester of the need for additional time, additional information, identification, or the tendering of fees (as specified in § 701.312), within 10 working days; except that if the request for access was not preceded by a notification request as provided in § 701.302, then the 10-day period will not begin until after such time as it has been determined that the record exists. If a request is complied with within 10 working days, no separate acknowledgement will be made.

[41 FR 8343, Feb. 26, 1976]

§ 701.306 Special procedure: Medical records.

(a) An individual requesting disclosure of a record which contains medical or psychological information may name a medical doctor or other person to act as his agent as described in § 701.310(a). Records containing medical or psychological information may be disclosed to that agent rather than to the individual at the individual's request.

(b) If the individual has not named a medical doctor as agent, the Council may determine, after consultation with a medical doctor, that disclosure of the information would have an adverse effect on the requester. The Council may then disclose that information to a medical doctor specified by the individual, rather than to that individual, either in person or by mail.

[40 FR 45676, Oct. 2, 1975, as amended at 41 FR 8343, Feb. 26, 1976]

§ 701.307 Request for correction or amendment to record.

(a) Any individual who has reviewed a record pertaining to him that was furnished to him under this subpart may request the agency to correct or amend all or any part of that record.

(b) Each individual requesting a correction or amendment will send the request to the agency official who furnished the record to him.

(c) Each request for a correction or amendment of a record will contain the following information:

(1) The name of the individual requesting the correction or amendment;

(2) The name of the system of records in which the record sought to be corrected or amended is maintained;

(3) The location of that record in the system of records;

(4) A copy of the record sought to be corrected or amended or a description of that record;

(5) A statement of the material in the record requested to be corrected or amended;

(6) A statement of the specific wording of the correction or amendment sought; and

(7) A statement of the basis for the requested correction or amendment.

including any material that the individual can furnish to substantiate the reasons for the correction or amendment sought.

§ 701.308 Council review of request for correction or amendment of record.

(a) Not later than 10 days (excluding Saturdays, Sundays, and legal holidays) after the receipt of the request for the correction or amendment of a record under § 701.307, the Council will acknowledge receipt of the request and inform the individual whether further information is required before the correction or amendment can be considered.

(b) The Council will promptly review the request and either make the requested correction or amendment or notify the individual of the initial adverse determination, including in the notification the reasons for the adverse determination and the appeal procedure provided by § 701.309.

(c) The Assistant Director, Program Coordination and Management, or his designee, will, after consulting with the General Counsel, or his designee, have the primary authority to make an initial adverse determination.

(d) The Council will make each requested correction or amendment to a record if that correction or amendment will correct anything that is not accurate, relevant, timely, or complete, within the record.

(e) If the requested correction or amendment to a record is agreed to by the Council, the Council will, within 30 working days: (1) Advise the individual; (2) correct the record accordingly; and (3) where an accounting of disclosures had been made (as provided in § 701.311), advise all previous recipients (including the individual) of the record of the fact that the correction was made and the substance of the correction.

[40 FR 45676, Oct. 2, 1975, as amended at 41 FR 8343, Feb. 26, 1976]

§ 701.309 Appeal of initial adverse determination.

(a) Any individual whose request for a correction or amendment, requested by him, to a record has been denied, in whole or in part, may appeal that decision to the Director of the Council.

(b) The appeal will be in writing and will:

(1) Name the individual making the appeal;

(2) Identify the record sought to be amended;

(3) Name the record system in which that record is contained;

(4) Contain a short statement describing the amendment sought; and

(5) State the name and location of the Council official who made the initial adverse determination.

(c) Not later than 30 days (excluding Saturdays, Sundays, and legal holidays) after the date on which the Council received the appeal, the Director will complete his review of the appeal and make a final decision thereon. However, for good cause shown, the Director may extend that 30 day period by not more than an additional 30 working days. If the Director so extends the period, he will promptly notify the individual requesting the review that the extension has been made and the reasons therefor.

(d) After review of an appeal request, the agency will send a written notice to the requester containing the following information:

(1) The decision and, if the denial is upheld, the reasons for the decision; and

(2) The specific civil remedies available to the requester as per section 2(g) of Pub. L. 93-579, as well as notice that additional remedies may be appropriate and available to enable the full exercise of the requester's rights at law.

(3) The right to file with the Council a concise statement setting forth the requester's reasons for disagreement with the Council's refusal to correct or amend the record.

[40 FR 45676, Oct. 2, 1975, as amended at 41 FR 8344, Feb. 26, 1976]

§ 701.310 Disclosure of record to person other than the individual to whom it pertains.

(a) Any individual who desires to have a record covered by this subpart disclosed to or mailed to a person other than that individual may authorize that person to act as his agent

for that specific purpose. The authorization will be in writing, signed by the individual, and will be notarized. The agent will submit with the authorization proof of the individual's identity as required by § 701.304(b).

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, may act on behalf of that individual in any matter covered by this subpart. A parent or guardian who desires to act on behalf of such an individual will present suitable evidence of parentage or guardianship, by birth certificate, certified copy of a court order, or similar documents, and proof of the individual's identity in a form that complies with § 701.304(b).

(c) An individual to whom a record is to be disclosed in person pursuant to this subpart, may have a person of his own choosing accompany the individual when the record is disclosed.

§ 701.311 Accounting for disclosures.

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any person, or to another agency, under any of the provisions of § 701.303 except § 701.303(c)(1) and (2), an accounting will be made.

(2) The accounting will record (i) the date, nature, and purpose of each disclosure of a record to any person or to another agency and (ii) the name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section will be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accounting.* (1) Except for accounting of disclosures made under § 701.303(c)(1) and (2), accountings of all disclosures of a record will be made available to the individual to whom the record relates at his or her request.

(2) An individual desiring access to accountings of disclosures of a record pertaining to him or her will submit his request by following the procedures of § 701.305.

(c) *Notification of disclosure.* When a record is disclosed pursuant to § 701.303(c)(11) as the result of the order of a court of competent jurisdiction, reasonable efforts will be made to notify the individual to whom the record pertains as soon as the order becomes a matter of public record.

[41 FR 8344, Feb. 26, 1976]

§ 701.312 Fees.

(a) The Council will not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Council makes a copy of a record as a necessary part of the process of disclosing the record to an individual, the Council will not charge the individual for the cost of making that copy.

(b) If an individual requests the Council to furnish him with a copy of the record (when a copy has not otherwise been made as a necessary part of the process of disclosing the record to the individual), the Council will charge a maximum fee of $0.25 per page (maximum per page dimension of 8 × 14 inches) to the extent that the request exceeds $5.00 in cost to the Council. Requests not exceeding $5.00 in cost to the Council will be met without cost to the requester.

[40 FR 45676, Oct. 2, 1975. Redesignated at 41 FR 8344, Feb. 26, 1976]

§ 701.313 Penalties.

Title 18 U.S.C. 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of $10,000 or imprisonment for not more than 5 years or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. Section 552a(i)(3) of the Privacy Act (5 U.S.C. 552a(i)(3)) makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Section 552a(i)(1) and (2) of the Privacy Act (5 U.S.C. 552a(i)(1) and (2) provide penalties for violations by agency employees of the Privacy Act or regulations established thereunder.

[40 FR 45676, Oct. 2, 1975. Redesignated at 41 FR 8344, Feb. 26, 1976]

§ 701.314 Exemptions.

No Council records system or systems are exempted from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a(j) and (k).

[40 FR 45676, Oct. 2, 1975. Redesignated at 41 FR 8344, Feb. 26, 1976]

PART 704—PLAN FORMULATION STANDARDS AND PROCEDURES

Subparts A–D—[Reserved]

Subpart E—Standards for Plan Formulation and Evaluation

§ 704.39 Discount rate.

(a) The interest rate to be used in plan formulation and evaluation for discounting future benefits and computing costs, or otherwise converting benefits and costs to a common time basis, shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity: *Provided, however,* That in no event shall the rate be raised or lowered more than one-quarter of 1 percent for any year. The average yield shall be computed as the average during the fiscal year of the daily bid prices. Where the average rate so computed is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent nearest to such average rate.

(b) The computation shall be made as of July 1 of each year, and the rate thus computed shall be used during the succeeding 12 months. The Executive Director shall annually request the Secretary of the Treasury to inform the Water Resources Council of the rate thus computed.

(c) Subject to the provisions of paragraphs (d) and (e) of this section, the provisions of paragraphs (a) and (b) of this section shall apply to all Federal and federally assisted water and related land resources project evaluation reports submitted to the Congress, or approved administratively, after the close of the second session of the 90th Congress.

(d) Where construction of a project has been authorized prior to the close of the second session of the 90th Congress, and the appropriate State or local governmental agency or agencies have given prior to December 31, 1969, satisfactory assurances to pay the required non-Federal share of project costs, the discount rate to be used in the computation of benefits and costs for such project shall be the rate in effect immediately prior to the effective date of this section, and that rate shall continue to be used for such project until construction has been completed, unless the Congress otherwise decides.

(e) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the discount rate to be used in plan formulation and evaluation during the remainder of the fiscal year 1969 shall be 4⅝ percent except as provided by paragraph (d) of this section.

(f) Section V. G. 2 of the interagency agreement dated May 15, 1962, approved by the President on May 15, 1962, entitled "Policies, Standards, and Procedures in the Formulation, Evaluation, and Review of Plans for Use and Development of Water and Related Land Resources," and published on May 29, 1962, as Senate Document No. 97, 87th Congress, 2d Session, is superseded by the provisions of this section.

(Sec. 402, 79 Stat. 254; 42 U.S.C. 1962d–1)

[33 FR 19170, Dec. 24, 1968]

PART 705—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

705.1 Purpose.
705.2 Definitions.
705.3 Application of this part.
705.4 Discrimination prohibited.
705.5 Assurance required.
705.6 Compliance information.
705.7 Conduct of investigations.
705.8 Procedure for effecting compliance.
705.9 Hearings.

Sec.
705.10 Decisions and notices.
705.11 Judicial review.
705.12 Effect on other regulations.

AUTHORITY: Sec. 602 of Pub. L. 88-352, 78 Stat. 252, (42 U.S.C. 2000 d—1), and sec. 402 of Pub. L. 89-80, 79 Stat. 254, (42 U.S.C. 1962 d—1).

SOURCE: 39 FR 41521, Nov. 29, 1974, unless otherwise noted.

§ 705.1 Purpose.

The purpose of this subpart is to implement the provisions of Title VI of the Civil Rights Act of 1964, 78 Stat. 252 (hereafter referred to as the "Act"), to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance from the Water Resources Council.

§ 705.2 Definitions.

As used in this part:

(a) "Applicant" means one who submits an application, request, or plan required to be approved by the Water Resources Council, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

(b) "Facility" includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(c) "Federal financial assistance" includes:

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and

(5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) "Primary recipient" means any recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(e) "Program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(f) "Recipient" may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does

not include any ultimate beneficiary under any such program.

(g) "Responsible agency official" means the Director of the Water Resources Council or his designee.

§ 705.3 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Water Resources Council. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the date of this part pursuant to an application whether approved before or after such date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, or (b) any employment practice except to the extent described in § 705.4(c).

§ 705.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not directly or through contractual or other arrangements, on the grounds of race, color, or national origin:

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program; or

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of persons to whom, or the situations in which, such services, financial aid, other benefits, or facilties will be provided under any such program, or the class of persons to be afforded an opprotunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(5) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial as-

sistance, on the grounds of race, color, or national origin. When previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

(c) *Employment practices.* (1) Where a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the grounds of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive Order which supersedes it.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practice of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Location of facilities.* A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

§ 705.5 Assurance required.

(a) *General.* Every application for Federal financial assistance to carry out a program to which this part applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, or personal property or equipment of any kind, such assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for any other purpose involving the provisions of similar services or benefits. In all other cases, such assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible agency official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors, and subcontractors, transferees, successors in interest, and other participants in the program.

Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) *Planning grants to States.* Each designated State agency must submit the assurance specified in § 703.5(n) of these rules and regulations.

(c) *River basin commissions.* Each river basin commission is required to submit, along with its annual budget request, written assurance of its continuing compliance with § 705.4 of this part.

§ 705.6 Compliance information.

(a) *Cooperation and assistance.* The responsible agency official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible agency official timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible agency official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient or subcontracts with any other person or group, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible agency official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this part. Whenever any information required of a recipient is in the exclusive possession of any other agency, institution, or person and that agency, institution, or person fails or refuses to furnish that information, the recipient shall so certify in its report and set forth the efforts which it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible agency official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 705.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible agency official shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible agency official a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible agency official.

(c) *Investigations.* The responsible agency official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, whenever appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible agency official will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal

means, action will be taken as provided for in § 705.8.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the responsible agency official will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purpose of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 705.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part and if the noncompliance or threatened noncompliance cannot be corrected by informal means, the responsible agency official may suspend or terminate, or refuse to grant or continue, Federal financial assistance, or use any other means authorized by law, to induce compliance with this part. Such other means include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with assurance requirement.* If an applicant or recipient fails or refuses to furnish an assurance required under § 705.5 or fails or refuses to comply with the provisions of the assurance it has furnished, or otherwise fails or refuses to comply with any requirement imposed by or pursuant to Title VI or this part, Federal financial assistance may be suspended, terminated, or refused in accordance with the procedures of Title VI and this part. The Water Resources Council shall not be required to provide assistance in such a case during the pendency of administrative proceedings under this part, except that the Council will continue assistance during the pendency of such proceedings whenever such assistance is due and payable pursuant to a final commitment made or an application finally approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(1) The responsible agency official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Chairman of the Water Resources Council pursuant to § 705.10(e); and

(4) The expiration of 30 days after the responsible agency official has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance with Title VI of the Act by any other means authorized by law shall be taken until:

(1) The responsible agency official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified or its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 705.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 705.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible agency official that the matter be scheduled for heaing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 705.8(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Water Resources Council in Washington, D.C., at a time fixed by the responsible agency official unless it determines that the convenience of the applicant or recipient or of the Council requires that another place be selected. Hearings shall be held before the responsible agency official or at its discretion, before a hearing examiner appointed in accordance with section 3105 of Title 5, U.S.C., or detailed under section 3344 of Title 5, U.S.C.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Water Resources Council shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with the Administrative Procedure Act (5 U.S.C. 554–557) and with such other regulations that may be necessary or appropriate for the conduct of hearings pursuant to this part.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the responsible agency official may, by agreement with such other

departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 705.10.

§ 705.10 Decisions and notices.

(a) Procedure on decisions by hearing examiner. If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days after the mailing of such notice of initial decision, file with the responsible agency official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible agency official may, on his own motion, within 45 days after the initial decison, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of notice of review, the responsible agency official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice or review the initial decision shall, subject to paragraph (e) constitute the final decision of the responsible agency official.

(b) *Decisions on record or review by the responsible agency official.* Whenever a record is certified to the responsible agency official for decision or its reviews the decision of a hearing examiner pursuant to paragraph (a) of this section or whenever the responsible agency official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions and a written copy of the final decision of the responsible agency official shall be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 705.9, a decision shall be made by the responsible agency official on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or the responsible agency official shall set forth his or its ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by the Chairman.* Any final decision by the responsible agency official provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Chairman of the Water Resources Council, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such programs to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible agency official that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) shall be restored to full eligibility to receive Federal financial as-

sistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible agency official determines that those requirements have been satisfied he shall restore such eligibility.

(3) If the responsible agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the responsible agency official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record. The applicant or recipient will be estored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1). While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 705.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 705.12 Effect on other regulations.

(a) Nothing in this part shall be deemed to supersede any other order, regulation, or instruction which prohibits discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The responsible agency official shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The responsible agency official may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 705.10), including the achievement of effective coordination and maximum uniformity within the Water Resources Council and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action, taken, determination made, or requirements imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the responsible agency official.

PART 706—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

Sec.

706.101 Purpose.
706.102 Definitions.
706.103 Remedial action.
706.104 Interpretation and advisory service.

Subpart B—Conduct and Responsibilities of Employees

706.201 Proscribed actions.
706.202 Gifts, entertainment, and favors.
706.203 Outside employment and activity.
706.204 Financial interests.
706.205 Misuse of information.
706.206 Support of Council programs.
706.207 Use of Government property.
706.208 Indebtedness.
706.209 Gambling, betting, and lotteries.
706.210 Coercion.
706.211 General conduct prejudicial to the Government.
706.212 Miscellaneous statutory provisions.

Subpart C—Conduct and Responsibilities of Special Government Employees

706.301 Use of Government employment.
706.302 Use of inside information.

Sec.

706.303 Gifts, entertainment, and favors.
706.304 Applicability of other provisions.

Subpart D—Statements of Employment and Financial Interests

706.401 Employees required to submit statements.
706.402 Employee's complaint on filing requirement.
706.403 Form of statements.
706.404 Time for submission of statements.
706.405 Supplementary statements.
706.406 Interests of employees' relatives.
706.407 Information not known by employees.
706.408 Information not required.
706.409 Opportunity for explanation of conflict or appearance of conflict.
706.410 Confidentiality of statements.
706.411 Effect of statements on other requirements.
706.412 Submission of statements by special Government employees.
706.413 Submission of statements by River Basin Commission Chairmen.

AUTHORITY: Water Resources Planning Act, 1965 (Sec. 402, Pub. L. 89-80, 79 Stat. 254 (42 U.S.C. 1962d-1)); E.O. 11222 (30 FR 6469, 3 CFR Proc. 3279; as amended); 5 CFR Part 735 (33 FR 12487).

SOURCE: 40 FR 32818, Aug. 4, 1975, unless otherwise noted.

Subpart A—General Provisions

§ 706.101 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by employees and special Government employees is essential to assure the proper performance of the Water Resources Council's (hereafter referred to as the Council) business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts, this part sets forth the Council's regulations prescribing standards of conduct and responsibilities and governing statements of employment and financial interests for employees and special Government employees.

§ 706.102 Definitions.

In this part:

(a) "Employee" means the Director and an employee of the Council employed by the Director under the authority of § 701.78(a)(4) of this chapter.

(b) "Special Government employee" means a special Government employee as defined in section 202 of Title 18 of the United States Code who is employed by the Council.

§ 706.103 Remedial action.

(a) A violation of this part by an employee or special Government employee may be cause for remedial action. Remedial action may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee or special Government employee of his conflicting interest;

(3) Disciplinary action which may be in addition to any penalty prescribed by law; or

(4) Disqualification for a particular assignment.

(b) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

§ 706.104 Interpretation and advisory service.

The General Counsel will serve as Counselor for the purpose of providing interpretation and advisory assistance to the Council staff on matters covered in this Part 706.

Subpart B—Conduct and Responsibilities of Employees

§ 706.201 Proscribed actions.

An employee shall avoid any action which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 706.202 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Council;

(2) Conducts operations or activities that are regulated by the Council; or

(3) Has interests that may be substantially affected by the performance or nonperformance of his official duty.

(b) The restrictions set forth in paragraph (a) of this section do not apply to:

(1) Obvious family or personal relationships, such as those between the employee and his parents, children, or spouse, when the circumstances make it clear that those relationships rather than the business of the persons concerned are the motivating factors;

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may be properly in attendance;

(3) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor § 706.203 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under Council orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967.

§ 706.203 Outside employment and activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include, but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances wherein acceptance may result in, or create the appearance of, a conflict of interest;

(2) Outside employment or activity which tends to impair his mental or physical capacity to perform the duties and responsibilities of his position in an acceptable manner;

(3) Outside employment or activity which is in violation of a statute, Executive order, or regulation, including applicable State and local statutes and ordinances.

(b) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, Executive Order 11222 of May 11, 1965, as amended by Executive Order

11590 of April 27, 1971, this part or other Council regulations. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for use of non-public information on the basis that the use is in the public interest.

(c) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government.

(d) An employee shall not engage in outside work or activity which may be construed by the public to be official acts of the Council, or of a nature closely paralleling the work of the Council.

(e) An employee who engages in any kind of outside paid employment on a substantially regular basis shall submit to his immediate supervisor a memorandum describing the employment and stating approximately how many hours per week he is so employed. The immediate supervisor shall forward the memorandum through the Director for inclusion in the employee's Official Personnel Folder.

(f) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law;

(2) Participation in the local self-government activities in the community in which he resides to the extent permitted by law; or,

(3) Participation in the affairs of, or acceptance of an award for meritorious public contribution or achievement given by, a charitable, religious, professional, social, fraternal, nonprofit educational, recreational, public service, or civic organization.

§ 706.204 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of or primarily relying on, information obtained through his Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive Order 11222, as amended, 5 CFR Part 735, or this part.

§ 706.205 Misuse of information.

For the purpose of furthering a private interest an employee shall not, except as provided in § 706.203(b), directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

§ 706.206 Support of Council programs.

(a) When a Council program is based on law or Executive order, every employee has a positive obligation to make it function as efficiently and economically as possible and to support it as long as it is a part of recognized public policy. An employee may, therefore, properly make an address explaining and interpreting such a program, citing its achievements, defending it against uninformed or unjust criticism, pointing out the need for possible improvements, or soliciting views for improving it.

(b) An employee shall not, either directly or indirectly, use appropriated funds to influence a Member of Congress to favor or oppose legislation in violation of 18 U.S.C. 1913. However, an employee is not prohibited from:

(1) Testifying as a representative of the Council on pending legislation proposals before congressional committees on request; provided, that the relevant provisions of the Current OMB

Circular A-14 ("Legislation Coordination and Clearance") are complied with; or

(2) Assisting congressional committees in drafting bills or reports on request, when it is clear that the employee is serving solely as a technical expert under the direction of committee leadership.

§ 706.207 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property including equipment, supplies, and other property entrusted or issued to him.

§ 706.208 Indebtedness.

(a) An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law, such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as Federal, State or local taxes.

(b) When an employee has a levy placed against his salary for failure to pay an indebtedness for Federal income taxes, he shall be issued a written reprimand stating that failure to make satisfactory arrangements regarding future tax liabilities will be grounds for removal.

(c) When an employee is the subject of a letter of complaint stating that he has not paid his State or local taxes and has failed to make satisfactory arrangements regarding the debt, he shall be interviewed by the Assistant Director, Division of Program Coordination and Management. In this interview he shall be instructed to make satisfactory arrangements for the payment of his debt immediately and informed that failure to do so will be grounds for removal.

(d) When an employee is the subject of a letter of complaint regarding any other kind of indebtedness to a unit of government, Federal, State, or local, the procedure prescribed in paragraph (c) of this section shall be observed.

(e) When a creditor who holds a legal judgment against an employee requests that the Council assist in collecting the debt, the employee shall be interviewed by the Assistant Director, Division of Program Coordination and Management. In this interview he shall be instructed to pay the debt in full within 90 days, or within whatever longer period is specified by the Assistant Director, Division of Program Coordination and Management if he determines that a 90-day limit would impose undue hardship on the employee, and informed that failure to do so will be grounds for removal.

(f) When an employee is the subject of a letter of complaint from a creditor who does not hold a legal judgment against the employee, the Assistant Director, Division of Program Coordination and Management shall forward a copy of the letter to the employee together with a memorandum calling the employee's attention to the provisions of this section. However, the Council will not assist the creditor in collecting the debt.

§ 706.209 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 706.210 Coercion.

An employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

§ 706.211 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 706.212 Miscellaneous statutory provisions.

The attention of each employee is directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the Code of Ethics for Government Service.

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft and conflicts of interest.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (E.O. 10450, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against:

(1) The disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and

(2) The disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against:

(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in Subchapter III of Chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(q) The provision relating to the denial of the right to petition Congress (5 U.S.C. 7102).

(r) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(s) The prohibition against a public official appointing or promoting a relative, or advocating such an appointment or promotion (5 U.S.C. 3110).

(t) The prohibition against the employment of an individual convicted of felonious rioting or related offenses (5 U.S.C. 7313).

(u) The tax imposed on certain employees (e.g., Presidential appointees, employees excepted under Schedule C, employees in GS-16 or above, or a comparable pay level) who knowingly engage in self-dealing with a private foundation (26 U.S.C. 4941, 4946). "Self-dealing" is defined in the statute to include certain transactions involving an employee's receipt of pay, a loan, or reimbursement for travel or other expenses from, or his sale to or purchase of property from a private foundation.

Subpart C—Conduct and Responsibilities of Special Government Employees

§ 706.301 Use of Government employment.

A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 706.302 Use of inside information.

(a) A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for him-

self or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(b) A special Government employee may engage in teaching, lecturing, and writing to the same extent, and subject to the same restrictions, as provided in § 706.303(b) for employees.

§ 706.303 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section a special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with the Council anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) The exceptions from the restrictions as set forth in § 706.202(b) for employees apply in the same manner to special Government employees.

§ 706.304 Applicability of other provisions.

The provisions of §§ 706.206 through 706.211 apply to special Government employees in the same manner as to employees.

Subpart D—Statements of Employment and Financial Interests

§ 706.401 Employees required to submit statements.

(a) Employees in the following named positions shall submit statements of employment and financial interst to the Director:

(1) Employees in Grade GS-16 or above of the General Schedule established by the Classification Act of 1949, as amended;

(2) The General Counsel and Administrative Officer;

(3) The Staff Specialists assigned to review applications by States for planning grants under Title III of the Water Resources Planning Act;

(4) Special Government employees, as defined in § 706.102; and

(5) Employees classified at GS-13 or above under 5 U.S.C. 5332, or at a comparable pay level under another authority, who are in positions which the Director may determine have duties and responsibilites which require the incumbent to report employment and financial interests in order to avoid involvement in possible conflicts-of-interest situation and carry out the purpose of law, Executive order, and Council regulations.

(b) A statement of employment and financial interest is required from the Director and shall be submitted by the Director to the Chairman of the Council.

§ 706.402 Employee's complaint on filing requirements.

An employee who feels that his position has been improperly included in the list in § 706.401 as one requiring the submission of a statement of employment and financial interests may obtain a review of his complaint under the Council's internal grievance procedure.

§ 706.403 Form of statements.

An employee required to submit a statement of employment and financial interests shall submit that statement in the format prescribed by the Division of Management.

§ 706.404 Time for submission of statements.

An employee required to submit a statement of employment and financial intersts by § 706.401 shall submit that statement no later than 30 days after the date of entrance on duty in the position covered by § 706.401.

§ 706.405 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement, in the format prescribed by the Division of Management, as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual

report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result in a violation of the conflicts-of-interest provisions of section 18 U.S.C. 208, or Subpart B of this part.

§ 706.406 Interests of employees' relatives.

The interests of a spouse, minor child, or other member of an employee's immediate household are considered to be interests of the employee. For the purpose of this section, "member of a employee's immediate household" means those blood relations who are residents of the employee's household.

§ 706.407 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or on a supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information in his behalf.

§ 706.408 Information not required.

An employee is not required to submit on a statement of employment and financial interests, or on a supplementary statement, any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 706.409 Opportunity for explanation of conflict or appearance of conflict.

When a statement submitted under § 706.401 indicates a conflict or an appearance of conflict, between the interests of an employee and the performance of his services for the Government, the employee concerned shall be given an opportunity to explain the conflict or appearance of conflict before remedial action is initiated.

§ 706.410 Confidentiality of statements.

Each statement of employment and financial interests, and each supplementary statement, shall be held in confidence and retained in limited access files of the reviewing official. The use of information on the statements shall be limited to that necessary to carry out the purposes of this part. Information from a statement or a supplementary statement shall not be disclosed except by decision of the Director for good cause shown: *Provided*, That information from a statement or a supplementary statement of the Director shall not be disclosed except by decision of the Chairman for good cause shown.

§ 706.411 Effect of statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for or in derogation of any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which he or the other person's participation is prohibited by law, order, or regulation.

§ 706.412 Submission of statements by special Government employees.

(a) Each special Government employee shall submit a statement of employment and financial interests not later than the time of his employment. Each special Government employee shall keep his statement current throughout his period of employment by the submission of supplementary statements.

(b) A special Government employee shall submit his statement of employment and financial interests in the format prescribed by the Division of Management. The statement will be

filed with the Division of Management and is accorded the confidentiality prescribed in § 706.410.

(c) The provisions of §§ 706.406 through 706.411 apply to special Government employees in the same manner as to employees.

(d) The Director may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special Government employee who is not a consultant or an expert when he finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purposes of this paragraph "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual.

§ 706.413 Submission of statements by River Basin Commission Chairmen.

A statement of employment and financial interest is not required under this part from Chairmen of River Basin Commissions created by the President pursuant to Title II of the U.S. Water Resources Planning Act. The Commission Chairmen are subject to section 401 of Executive Order 11222, as amended, and are required to file a statement with the Chairman of the Civil Service Commission.

PART 707—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Subpart A—General

Sec.

707.1 Background.
707.2 Purpose.
707.3 Applicability.
707.4 Definitions.
707.5 Policy.

Subpart B—Water Resources Council Implementing Procedures

707.6 Early involvement in private, State, local, and other non-Federal activities requiring Federal action.
707.7 Ensuring that environmental documents are actually considered in agency decisionmaking.
707.8 Typical classes of action requiring similar treatment under NEPA.
707.9 Tiering.
707.10 Scoping.
707.11 Environmental information.

AUTHORITY: National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); E.O. 11991, 42 FR 26967, 3 CFR 1977 Compl. p. 123.

SOURCE: 44 FR 69922, Dec. 5, 1979, unless otherwise noted.

Subpart A—General

§ 707.1 Background.

(a) The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection and enhancement of the environment. Section 102(2) of NEPA contains certain policy statements and procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) Executive Order 11991 of May 24, 1977, amended E.O. 11514 and directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR Parts 1500-1508) on November 29, 1978, which are binding on all Federal agencies as of July 30, 1979. Section 1507.3(a) of CEQ regulations provides that each Federal agency shall as necessary adopt implementing procedures to supplement the regulations. Section 1507.3(b) of the CEQ NEPA regulations identifies those sections of the regulations which must be addressed in agency procedures.

§ 707.2 Purpose.

The purpose of this NEPA rule is to establish Water Resources Council

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(WRC) policy and procedures which supplement the CEQ NEPA regulations by making them more specifically applicable to our activities and which implement § 1507.3 (a) and (b) of the CEQ NEPA regulations. This rule will be revised to incorporate detailed procedures integrating NEPA and the Principles and Standards (P&S) and applicable parts of the procedures for Federal participants in the preparation of comprehensive regional or river basin plans when these procedures are developed. This NEPA rule must be used in conjunction with the CEQ NEPA regulations. Compliance with both the CEQ NEPA regulations and this NEPA rule is required. Information in the CEQ NEPA regulations generally is not repeated here to avoid needless duplication. This NEPA rule supersedes WRC Policy Statement No. 2—Environmental Statements-Framework Studies and Assessments and Regional or River Basin Plans.

§ 707.3 Applicability.

This NEPA rule applies to the WRC as an independent executive agency and to Title II river basin commissions (RBC's) and other entities (such as interagency committees) preparing studies and plans for WRC review and transmittal to the President. Although Title III State planning grants do not normally require environmental assessments or statements (§ 707.8 (a)(3)), the WRC will encourage States receiving grants to give appropriate consideration to the environmental effects of their proposed actions and to incorporate suitable environmental conditions, to the extent permitted by State law. The preamble to the WRC Title III guidelines will reflect this policy.

§ 707.4 Definitions.

(a) *Responsible Federal Official (RFO).* The "Responsible Federal Official (RFO)" is the official of the Federal Government designated by this rule who shall be responsible for the implementation of NEPA, including regulations issued by the CEQ (40 CFR Parts 1500 through 1508) and the rule. Of particular importance, the RFO determines the need for an Environmental Assessment or Environmental Impact Statement (EIS) in accordance with § 707.8 (a)(2) and (b), and if an EIS is required, files the draft and final EIS, makes the Record of Decision and assures appropriate public involvement in accordance with 40 CFR 1506.6. The Chairman of the RBC's are the RFO's for the purpose of ensuring compliance with the provisions of NEPA and the P&S for those activities which are funded in whole or in part through the WRC and carried out by the RBC's, such as framework studies, special studies, comprehensive coordinated joint plans, regional or river basin (Level B) plans and revisions thereof. The Chairman of the WRC, or his designee, is the RFO for complying with the provisons of NEPA and the P&S for those framework studies, regional or river basin plans, comprehensive coordinated joint plans, and special studies which are funded by the WRC and carried out by WRC interagency committees and WRC coordinating committees; principles, standards and procedures for planning water and related land resources; rules and regulations of the WRC, and other activities of the WRC.

(b) *Major Federal Action.* "Major Federal action" as defined in the CEQ NEPA regulations (40 CFR 1508.18) includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Such actions include WRC interagency committee, and WRC coordinating committee adoption, approval or submittal of plans for water and related land resources. For the purpose of this rule, RBC adoption, approval or submittal of a plan for water and related land resources is considered a major Federal action by virtue of the scope and significant environmental consequences of such actions, the participation of Federal officials in these RBC actions, and the WRC requirements for Federal agency consistency with approved regional water resource management plans (WRC Policy Statement No. 4—The Utilization of Comprehensive Regional Water Resource Management Plans).

§ 707.5 Policy.

(a) *General.* The WRC and the RBC's administer certain programs that must comply with both NEPA and the P&S. Generally, the environmental analysis done during the development of the Environmental Quality (EQ) account under the P&S partially overlaps the analysis required in an EIS, presenting an opportunity for integration. The requirements of NEPA and the P&S will be carried out by integrating the two processes to the fullest extent practicable and by combining to the fullest extent practicable the Environmental Assessment or, when required, Environmental Impact Statement, with each study or plan into a single document that will comply fully with the requirements of both processes, as provided by the CEQ NEPA regulations (40 CFR 1502.10 and 1506.4).

(b) *Public participation.* For each environmental assessment and impact statement, the appropriate RFO will establish a specific program and schedule for public participation of all interested parties in the NEPA process, and shall otherwise provide for public involvement in accordance with the CEQ NEPA regulations (40 CFR 1506.6).

(c) *Environmental Impact Statements.* Environmental Impact Statements (EIS's) as required under Section 102(2)(C) of NEPA will be prepared by river basin commissions, interagency committee, or WRC coordinating committees for comprehensive coordinated joint plans and regional or river basin (Level B) plans, or revisions thereof. The Environmental Impact Statement will be prepared concurrently with the preparation of the study or plan. The statement will reflect the level of planning involved and will address those environmental considerations and alternatives relevant to decisionmaking at that level (see § 707.9 Tiering). Review and comment on the draft study or plan and the incorporated draft environmental impact statement will be performed simultaneously, and the final combined report will incorporate and discuss the comments received on the draft.

Subpart B—Water Resources Council Implementing Procedures

§ 707.6 Early involvement in private, State, local, and other non-Federal activities requiring Federal action.

(a) Section 1501.2(d) of the CEQ NEPA regulations requires Federal agencies to provide for early involvement in activities which, while planned by private or other non-Federal entities, requires some subsequent form of Federal approval or action to which NEPA applies. Such activities for which early involvement is appropriate include those private, local, State, or regional water and related land resources plans, projects or programs which should be included in a regional water resources management plan or Level B plan, since the plans normally required an EIS or assessment as provided in § 707.8(a) of this NEPA rule.

(b) To facilitate the implementation of 40 CFR 1501.2(d), the appropriate RFO shall publish and distribute in the region or basin in which a comprehensive or Level B study is conducted, guidelines for non-Federal entities of the types of plans, projects, and programs which shall be included in such comprehensive or Level B plan. The RFO shall advise non-Federal entities on the scope and level of environmental information and analysis needed for environmental documents.

§ 707.7 Ensuring that environmental documents are actually considered in agency decisionmaking.

(a) Section 1505.1 of the NEPA regulations contains requirements to ensure adequate consideration of the environmental documents in agency decisionmaking. To implement these requirements, the RFO shall:

(1) Consider relevant environmental documents in evaluating actions proposed in plans and studies.

(2) Make relevant environmental documents, comments, and responses part of the record in any formal rulemaking or adjudicatory proceedings.

(3) Ensure that relevant environmental documents, comments and responses accompany the proposed ac-

39-060 O—89——4

tions through existing review processes.

(4) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating proposals for agency action.

(5) Where an EIS has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS.

(b) The NEPA process begins at the earliest possible stage of the planning process and is completed when the RFO makes a finding of significant impact or a record of decision. In cases where the Chairman of a River Basin Commission, or regional Federal official has been designated as the RFO, and a plan or report is submitted to WRC for review and comment after completion of the NEPA process, the environmental documents incorporated into such plans or reports, or submitted with them, shall be fully considered by WRC when it prepares its views, comments, and recommendations for transmittal to the President and Congress. The RFO shall include the Findings of No Significant Impact, or the Record of Decision, with the documents submitted to WRC for review."

§ 707.8 Typical classes of action requiring similar treatment under NEPA.

(a) Section 1507.3(b)(2) of the CEQ NEPA regulations in conjunction with § 1508.4 requires agencies to establish three typical classes of action for similar treatment under NEPA. These typical classes of actions are set forth below:

(1) Actions normally requiring EIS's:

(i) Adoption, approval or submittal of regional water resources management plans (comprehensive, coordinated, joint plans or elements thereof).

(ii) Adoption, approval or submittal of Level B plans.

(2) Actions normally requiring assessments but not necessarily EIS's:

(i) Establishment and implementing guidance (including significant changes) in principles, standards, and procedures for planning water and related land resources.

(ii) Adoption, approval or submittal of framework studies and special studies which include recommendations for future actions.

(iii) Any action not in paragraph (a)(1) or (3) of this section.

(3) Actions normally not requiring assessments or EIS's (categorical exclusions):

(i) Approval of Title III State planning grants.

(ii) Adoption, approval or transmittal or priorities reports.

(iii) Preparation of the National Water Assessment.

(iv) Recommendations to the President with the respect to Federal policies and programs, except for transmittal of plans described in paragraph (a)(1) or (2) of this section for which the original EIS or Environmental Assessment (EA) will be transmitted with the plan. A second EIS is not required.

(v) Framework studies and assessments and special studies which do not include recommendations for future actions.

(b) Where the presence of extraordinary circumstances indicates that an action normally excluded may have a significant environmental effect, the appropriate RFO shall independently determine whether an EIS or an environmental assessment is required.

§ 707.9 Tiering.

In accordance with the CEQ NEPA regulations 40 CFR 1502.4(d) and 1508.28(a), this NEPA rule emphasizes the use of tiering to relate broad and narrow actions. The level of detail in EIS's and EA's prepared by RBC's, WRC interagency committees or WRC coordinating committees will reflect the level of detail in the plans, particularly the comprehensive and policy nature of comprehensive, coordinated, joint plans or elements or revisions thereof. These EIS's are not intended to substitute for individual statements on individual projects as more detailed planning and analysis will be required for major Federal actions proposed in these plans. The "policy" or "overview" EIS should serve as the framework and introduction for a more site-specific project EIS developed by the implementing Federal agency. Envi-

ronmental impact statements for regional water resource management and Level B plans will generally address the items in the recommended format (40 CFR 1502.10) on the basis of water and related land resources of an entire region or river basin. This is the level of consideration at which the environmental issues and considerations are most relevant to decisionmaking. They may also address groups of interrelated or individual plan elements where these involve significant environmental considerations.

§ 707.10 Scoping.

Scoping will be used to determine the extent of issues to be addressed by the EIS and to identify significant issues related to the proposed action. Scoping will be conducted as described by the CEQ NEPA regulations, §§ 1501.7 and 1508.25.

§ 707.11 Environmental information.

Interested persons may contact the Director, U.S. Water Resources Council, 2120 L Street, NW., Washington, DC 20037, for information regarding the Council's compliance with NEPA.

PART 708—UPPER MISSISSIPPI RIVER BASIN COMMISSION: PUBLIC PARTICIPATION IN UPPER MISSISSIPPI RIVER SYSTEM MASTER PLAN

Sec.
708.1 Definitions.
708.2 Scope.
708.3 Policy, objectives, and standards.
708.4 Required programs and reports.
708.5 Program objectives implementation.

AUTHORITY:,Title II, sec. 204, Pub. L. 89-80, Water Resources Planning Act of 1965; Title I, sec. 101(b), Pub. L. 95-502, Inland Waterways Authorization Act of 1978.

SOURCE: 44 FR 14537, Mar. 13, 1979, unless otherwise noted.

§ 708.1 Definitions.

As used in the part, the term:

(a) "Act" means the Inland Waterways Authorization Act of 1978, Pub. L. 95-502.

(b) "Commission" means the Upper Mississippi River Basin Commission, with headquarters at Fort Snelling, Twin Cities, Minnesota.

(c) "Master Plan" means the Upper Mississippi River System Comprehensive Master Management Plan mandated by Title I of the Act.

(d) "GREAT" refers to studies conducted by Great River Environmental Action Teams pursuant to section 117 of the Water Resources and Development Act of 1976 (Pub. L. 94-587) for purposes of developing balanced management strategies for multipurpose use of the Upper Mississippi River.

(e) "System" means those Upper Mississippi River reaches containing commercial navigation channels on the Mississippi River main stem north of Cairo, Illinois; the Minnesota River, Minnesota; Black River, Wisconsin; Saint Croix River, Minnesota and Wisconsin; Illinois River and Waterway, Illinois; and Kaskaskia River, Illinois.

(f) "Public meeting" means a meeting to provide individuals and representatives of interested organizations opportunities to present their opinions and suggestions by means of an informally structured format.

(g) "Public hearing" means a formally structured public meeting scheduled to provide adequate time for each testimony, which will be recorded, transcribed, published, and made available to the public.

§ 708.2 Scope.

(a) This part describes minimum guidelines for public participation in the development, revision, and implementation of the Master Plan specified in the Act.

(b) This part applies to the following organizations with references to the activities described in § 708.2(a):

(1) The Commission, including its staff and persons, organizations, and agencies under contract to it for work within the scope of the Master Plan.

(2) Such Federal departments and agencies as are directed under section 101(3) of the Act to conduct studies pursuant to the Master Plan, for any work carried out for purposes of developing, revising, and implementing the Master Plan.

(3) Such departments and agencies of any state or local government as are authorized and/or directed to carry out studies and analyses under direc-

tion or advice of the Commission as stipulated in section 101 of the Act.

(c) The guidelines referred to in this part shall be considered general requirements applicable to all studies, procedures, programs, regulations, or other administrative devices carried out under § 708.2(b), but only for those Master Plan Activities under authority of the Act.

§ 708.3 Policy, objectives, and standards.

(a) *Policy.* (1) Congress has directed the Commission to prepare a comprehensive Master Plan for management of the System in cooperation with appropriate Federal, state, and local officials. In developing the plan, the Commission is required to identify various economic, recreational, and environmental objectives of the System, recommend guidelines to achieve such objectives, and propose methods to assure compliance with such guidelines and coordination of future management decisions affecting the System, and include with the proposed plan any legislative proposals which may be necessary to carry out such recommendations and achieve such objectives.

(2) The Commission is required to provide for public participation in the development, revision, and implementation of the Master Plan and to encourage and assist such participation. In doing this, the Commission seeks to foster a spirit of openness and a sense of mutual trust between the public and the planners. Public participation is expected to result in greater responsiveness of the Master Plan to public concerns and priorities, as well as improved popular understanding of official studies, planning processes, and decisions.

(3) In order for public participation to be effective, it must be timely and integrated into the planning process. The Commission shall seek public participation prior to any decision-making on the Master Plan or any of its components. Such public participation will ordinarily include informational output about the plan, public response and input, two-way discussions or exchange, and Commission consideration of public expressions.

(4) Neither the Master Plan as a whole nor any component of it shall be formulated without incorporation of a program of public participation involving fair representation of all segments of the public. The public participation section of the Master Plan—Plan of Study shall be developed consistent with the guidelines described in this part.

(5) Public participation processes utilized by the Commission in developing the Master Plan shall aim for the highest achievable standards of objectivity and thoroughness consistent with other requirements of the Act and the intent, concepts, ideas, and basic tenets of the Principles and Standards for Planning Water and Related Land Resources published by the Water Resources Council in the FEDERAL REGISTER, Volume 38, Number 174, Part III, September 10, 1973 and any forthcoming revisions. Public participation programs shall include monitoring procedures to maintain an acceptable degree of responsiveness and accountability.

(b) *Objectives.* Objectives of the public participation program developed by the Commission as part of the Master Plan are:

(1) To develop awareness of public preferences by those responsible for preparation and approval of the Master Plan.

(2) To anticipate and help resolve conflicts arising during the study.

(3) To improve information transfer and public awareness of the study.

(4) To provide for periodic reviews in the development of the Master Plan as well as the final review required by the Act, and

(5) To provide for evaluation of public participation in the planning process.

(c) *Standards.* The Commission in meeting the above objectives recognizes that:

(1) Inputs from the public are important for development of the Master Plan;

(2) Participants are to include individual citizens as well as organizations;

(3) The public participation program is to assume the existence of numerous publics and their interests—identified and delineated according to a

number of socioeconomic, demographic, geographic, person, and ideological variables;

(4) The public participation process must be continuous: it is to be provided for, encouraged, and assisted throughout the planning process;

(5) The public participation process is to have as a product measurable sets of opinion and other manifestations of the public will in regard to details of the Master Plan;

(6) Inputs from the public into the Master Plan through avenues other than the Commission public participation program should be facilitated; and

(7) Desires expressed by the public are likely to be conflicting and therefore, public participation cannot be substituted for the decision-making responsibility.

§ 708.4 Required programs and reports.

(a) The Commission shall prepare a work plan for public participation as part of the Master Plan—Plan of Study. The work plan shall satisfy minimum standards described in this part. The work plan shall describe all substantive administrative and management arrangements to elicit public participation, shall delineate Commission member and staff responsibilities, and shall identify budgetary provisions.

(b) In addition to public meetings and hearings, the public participation program shall include survey research, program evaluation, and information/education activities as described in § 708.5.

(c) The Commission shall recommend long-term public participation activities and programs related to implementation of the Master Plan. These recommendations shall be based on evaluation of procedures and results mandated in this part and carried out during the Master Plan preparation.

(d) The Commission shall issue reports describing the participation program as developed or implemented during the designated reporting period. Each such report shall include as a minimum a brief description of the main participation elicited, the costs of the effort, and the use that was made of the elicited information in the planning process. The reporting periods shall be arranged so as to correspond generally with the main sequential segments of the overall planning process.

§ 708.5 Program objectives implementation.

(a) The continuing public participation program shall contain mechanisms or activities for each objective listed in § 708.3(b). The listing of specific measures in this section shall not preclude additional techniques for obtaining, encouraging, or assisting public participation. Special efforts shall be made to simplify the planning process and products for public and media use. Variances may occur in the use of any given program element, according to the nature of the planning issues, the budgetary resources accorded the participation process, and the effectiveness of the participation actually elicited and measured in the field.

(b) To obtain data in regard to plan-relevant public opinion, methods, shall include but not be limited to survey research.

(1) The survey research process shall be developed and utilized in connection with the Master Plan as a whole and its components. Whereas public meetings are organized to elicit unstructured participation and opinion changes, surveys shall be targeted on carefully selected samples of functionally defined publics located throughout the System.

(2) The Commission shall evaluate the effectiveness of the information/education program on the part of the surveyed publics. This is necessary for continued and sustained participation in the decision-making steps of the planning process.

(3) If a gap is found between the desired and actual effectiveness, the Commission shall develop and implement a short-term narrow-focus information and education program targeted at the specific problem areas in question.

(4) On completion of the short-term information/education program, resurveys shall be made among the affected publics. The results shall consti-

tute a measure of the effectiveness of the short-term information/education program.

(c) To improve information transfer and public awareness of the study, two levels of information and education activities shall be pursued. The first shall have the general public as its target audience and shall emphasize methods that foster general awareness and understanding of plan issues and the nature of the ongoing planning process. The second level of information and education activities shall focus on public interest groups, agency representatives, and elected officials and shall emphasize the creation of plan component data and information in a form that can be utilized by these groups in the plan decision-making process. The information presented shall be broadly representative of the relevant perspectives and issues.

(d) Throughout the period of study and the succeeding period of implementation of the Master Plan, the Commission shall provide a centralized capability for acting as an information/education center. The Commission shall provide a central source of media-directed information about the Master Plan, its components, future expected planning needs in the System, current program-related activities, and other relevant subject areas. Special efforts shall be made to summarize complex technical materials for public and media use. The Commission shall have standing arrangements for early consultation and exchange of views with interested or affected persons and organizations on development or revisions of plans, programs, or other significant actions prior to decision-making. Survey research methods and other procedures will be used to determine the content and emphasis of information and education activities and products.

(e) The Commission shall provide for periodic reviews of the development of the Master Plan as well as the final review required by the Act. Activities to accomplish this shall include:

(1) *Public meetings.* (i) Public meetings shall be organized at locations in parts of the System most significantly affected by the possible outcomes. These open meetings shall be timed to coincide with sequential elements of the planning process.

(ii) The meetings shall provide citizens and representatives of interested organizations an opportunity to utilize an informally-structured format to air their suggestions and grievances in regard to the subject matter of the Master Plan.

(iii) When the Commission deems a formal public hearing is necessary, it may coincide with the pulic meeting. When this is the case, a clear distinction shall be made between the formal and open segments of the meeting/hearing.

(iv) Documents and data pertaining to the agenda for each public meeting shall be made available to the public for a reasonable time prior to the public meeting, at a location convenient to the expected participants. In addition, the Commission shall prepare outlines of major issues including brief descriptions of the issues, alternatives, and sources of additional information.

(2) *Public hearings.* (i) The Commission is required to publish a preliminary plan not later than January 1, 1981 and to hold public hearings in each state which would be affected by the plan. The Commission is required to review all comments presented at such hearings or submitted in writing to the Commission, and, after making any revisions in the plan it decides are necessary, to submit to Congress a final Master Plan not later than January 1, 1982.

(ii) The public hearings on the preliminary plan and any other public hearings deemed necessary by the Commission are to be consistent with the provisions of sec. 205 of Pub. L. 89-80 in conformity with this part. If conflict exists between the minimum guidelines of this part and requirements of state or Federal law or other regulations pertaining to a particular hearing, the more stringent requirements shall be observed.

(iii) In addition to any other formal legal requirements, the public hearings are to be well publicized and notices of each hearing will be mailed to interested or affected persons at least 30 calendar days before the hearings.

(iv) In determining locations and times for hearings, consideration will be given to travel and to facilitating attendance and testimony by a cross-section of interested or affected persons and organizations. Accessibility of hearing sites by public transportation will be considered.

(v) The preliminary plan and any supporting reports, documents, and data to be discussed at the public hearings are to be made available to the public at least 30 days prior to the public hearings. Information concerning availability of the preliminary plan, reports, documents, and data will be provided in public hearing notices.

(vi) The elements of the public hearings, proposed time schedules, and any constraints on statements shall be specified in public hearing notices.

(vii) Testimony of witnesses at public hearings shall be scheduled in advance when necessary to ensure maximum participation and allotment of adequate time for testimony, provided that such scheduling is not used as a bar to unscheduled testimony. Blocks of time shall be considered for major categories of witnesses.

(viii) Public hearing procedures shall not inhibit free expression of views by requirements of more than one legible copy of any statement submitted, or for qualifications of witnesses beyond that needed for identification.

(ix) A record of public hearing proceedings shall be made promptly available to the public at cost. The Commission shall invite, receive, and consider comments in writing from any interested or affected persons and organizations. All such comments shall be part of the public record.

(f) To provide mechanisms for evaluation of public participations in the Master Plan:

(1) The Commission shall conduct periodic evaluations of the public participation program. The purpose of this evaluation is to determine the following:

(i) The extent of actual participation elicited from each of the process phases—public meetings, public hearings, survey research, direct input from organizations, and other sources.

(ii) The degree to which participation elicited from each process phase was actually utilized in the planning process.

(iii) Regional/local differences in effectiveness of public participation methods and procedures.

(iv) The need to modify the public participation process during the Master Plan.

(2) Public participation evaluations shall be incorporated into the Master Plan. Recommendations resulting from this overall evaluation shall be utilized to draft new guidelines and plans of study for public participation programs to be implemented after the Master Plan has been adopted.

PART 725—IMPLEMENTATION OF EXECUTIVE ORDERS 11988, FLOODPLAIN MANAGEMENT AND 11990, PROTECTION OF WETLANDS

Subpart A—Introduction

Sec.
725.0 Purpose.
725.1 Authority.
725.2 Policy.
725.3 Applicability.
725.4 Definitions.

Subpart B—Responsibilities

725.5 Council studies.
725.6 Principles, standards and procedures.
725.7 Regional or river basin planning.
725.8 Report, plan and recommendation development and review.
725.9 Reviews of compliance.

AUTHORITY: The Water Resources Planning Act of 1965, sec. 402, Pub. L. 89-80, 79 Stat. 245 (42 U.S.C. 1962d-1), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*), the Flood Disaster Protection Act of 1973, as amended (87 Stat. 975), E.O. 11988 and E.O. 11990 (42 FR 26951).

SOURCE: 45 FR 76683, Nov. 20, 1980, unless otherwise noted.

Subpart A—Introduction

§ 725.0 Purpose.

This rule establishes the procedures to be followed by the U.S. Water Resources Council for applying Executive Order 11988, Floodplain Management, and Executive Order 11990, Wetlands Protection, to the water resources

planning assistance activities that it performs.

§ 725.1 Authority.

This rule is being promulgated pursuant to the Water Resources Planning Act of 1965, section 402, Pub. L. 89-90, 79 Stat. 245 (42 U.S.C. 1962d-1). In addition, Executive Order 11988, *Floodplain Management*, at section 2(d); directs the preparation of procedures implementing its provisions, as does Executive Order 11990, *Protection of Wetlands*, at section 6. Each of these Orders was prepared in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). The floodplain management Order is also based on the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*), and the Flood Disaster Protection Act of 1977, as amended (87 Stat. 975).

§ 725.2 Policy.

It is the policy of the Council to provide leadership in floodplain management and the protection of wetlands. Further, the Council shall integrate the goals of the Orders to the greatest possible degree into its procedures for implementing the National Environmental Policy Act. The Council shall take action to:

(a) Avoid long- and short-term adverse impacts associated with the occupancy and modification of floodplains and the destruction or modification of wetlands;

(b) Avoid direct and indirect support of floodplain development and new construction in wetlands wherever there is a practicable alternative;

(c) Reduce the risk of flood loss;

(d) Promote the use of nonstructural loss reduction methods to reduce the risk of flood loss;

(e) Minimize the impact of floods on human health, safety and welfare;

(f) Minimize the destruction, loss or degradation of wetlands;

(g) Restore and preserve the natural and beneficial values served by floodplains;

(h) Preserve and enhance the natural and beneficial values served by wetlands;

(i) Involve the public throughout the floodplain management and wetlands protection decisionmaking process;

(j) Adhere to the objectives of the Unified National Program for Floodplain Management;

(k) Continually analyze existing and new policies of the Council to ensure consistency between them and the provisions of E.O. 11988 and 11990; and

(l) Improve and coordinate the Council's plans, programs, functions and resources so that the Nation may attain the widest range of beneficial uses of the environment without degradation or risk to health and safety.

§ 725.3 Applicability.

These regulations apply to all Council actions which have the potential to affect floodplains or wetlands or which would be subject to potential harm if they were located in floodplains or wetlands. The basic test of the potential of an action to affect floodplains or wetlands is the action's potential to result in the long- or short-term adverse impacts associated with:

(a) The occupany or modification of floodplains, or the direct and indirect support of floodplain development; or

(b) The destruction or modification of wetlands or the direct or indirect support of new construction in wetlands.

These procedures apply to Level A and B regional or river basin planning activities carried out by regional planning sponsors including consideration of inclusion of site specific projects in Level A or B regional or river basin plans. These procedures do not apply to site specific Level C planning carried out by individual Federal agencies. Each Federal agency shall use its own procedures promulgated pursuant to these Orders for such Level C planning.

§ 725.4 Definitions.

The following definitions shall apply throughout this regulation:

(a) All definitions from section 6 of E.O. 11988 (42 FR 26951); all definitions from section 7 of E.O. 11990 (42

FR 26951); and all definitions listed in the Glossary of the Council's Floodplain Management Guidelines for Implementing E.O. 11988 (43 FR 6030) from the term "base flood" through the term "structures."

(b) "Action" means all Council activities including but not limited to plan review, study preparation, preparation and modifications to the Council's Principles, Standards and Procedures (P,S,&P), provision of financial assistance for State, regional, and river basin planning and reviews of compliance.

(c) "Council" means the U.S. Water Resources Council.

(d) "Enhance" means to increase, heighten, or improve the natural and beneficial values associated with wetlands.

(e) "Regional planning sponsors" means Federal agencies, states, groups of States, river basin commissions, interstate compact commissions and interagency committees.

Subpart B—Responsibilities

§ 725.5 Council studies.

All studies and appraisals performed by the Council pursuant to section 102 of Pub. L. 89-80 and any recommendations based on these activities shall include specific analyses for reflection of and opportunities to meet the objectives of E.O. 11988 and E.O. 11990. The Council's Floodplain Management Guidelines (43 FR 6030), E.O. 11988 and E.O. 11990 provide the basic evaluation tools for these analyses.

§ 725.6 Principles, standards and procedures.

The Principles, Standards and Procedures established by the Council pursuant to section 103 of Pub. L. 89-80 shall reflect the provisions of the Executive Orders. These Principles, Standards and Procedures are found in 18 CFR Parts 710 through 717.

§ 725.7 Regional or river basin planning.

(a) In agreements between river basin commissions or other regional planning sponsors and the Council for the preparation and revision of regional and river basin Level B Studies and regional water resource management plans, the responsible official representing the river basin commission or regional planning sponsor shall certify to the Council that the following criteria have been or will be utilized as part of the planning process:

(1) Determination of whether proposed activities would be located in floodplains or wetlands, or, even if located outside of them, would have the potential to affect floodplains or wetlands;

(2) Avoidance of performing activities within floodplains or wetlands wherever there is a practicable alternative;

(3) Where avoidance of floodplains cannot be achieved, minimization of adverse impacts and support of floodplain development, and preservation and restoration of natural and beneficial floodplain values;

(4) Where avoidance of wetlands cannot be achieved, minimization of adverse impacts and support of new construction in wetlands, and preservation and enhancement of natural and beneficial wetlands values; and

(5) Involvement of the public in the floodplain management and wetlands protection decisionmaking process.

(b) The Council's Floodplain Management Guidelines (43 FR 6030) shall be used as the basis for implementing the criteria in § 725.7(a)(1) through (5).

(c) The responsible official representing the regional planning sponsor shall, to the fullest extent of his or her authority, ensure that any activities carried out under his or her plans and programs meet the criteria in § 725.7(a)(1) through (5).

§ 725.8 Report, plan and recommendation development and review.

All reports, plans and recommendations received under section 104 of Pub. L. 89-80 shall be reviewed by the Council for reflection of and opportunities to meet the objectives of E.O. 11988 and 11990. This review shall be based on the criteria in § 725.7(a)(1) through (5), on E.O. 11988 and 11990, and on the Council's Floodplain Management Guidelines (43 FR 6030).

§ 725.9 Reviews of compliance.

Reviews of compliance performed pursuant to section 304 of Pub. L. 89-80 shall include analysis of each program's treatment of floodplain management and wetland protection in accordance with the manner in which these concepts are expressed in E.O. 11988, 11990, and the Council's Floodplain Management Guidelines (43 FR 6030).

PART 740—STATE WATER MANAGEMENT PLANNING PROGRAM

Sec.

740.1 Purpose and scope.
740.2 Definitions.
740.3 State applications.
740.4 State water management planning program.
740.5 Review and approval of State applications and programs.
740.6 Financial assistance.
740.7 Administration of financial assistance.
740.8 Reporting.
740.9 Recordkeeping.
740.10 Program review and assistance.
740.11 Federal/State coordination.
740.12 Amendments.
740.13 Supplemental instructions.

AUTHORITY: Water Resources Planning Act of 1965 (as amended), Pub. L. 89-80, 79 Stat. 244, 42 U.S.C. 1962c; Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224, 92 Stat. 3, 41 U.S.C. 501 *et seq.*; F.O. 12044, 43 FR 12660.

SOURCE: 45 FR 72010, Oct. 30, 1980, unless otherwise noted.

§ 740.1 Purpose and scope.

(a) In recognition of the role of the States as the focal point for the management of water and related land resources, this part establishes guidelines for financial and program assistance to States for water management planning programs which address each State's particular needs, which are based on established State goals and objectives, and which take into consideration national goals and objectives.

(b) The purpose of the State Water Management Planning Program (Program) is to provide financial and program assistance to participating States to support the development and modification of comprehensive water management planning programs.

(c) Funds made available under this part shall be used to establish, develop or enhance existing or proposed State water resources management and planning programs that are designed to address pertinent State and national goals and objectives, as well as the goals and objectives of Title III of the Water Resources Planning Act (Act), Pub. L. 89-80, as amended, by addressing in the Program the following:

(1) Coordination of the program authorized by the Act and those related programs of other Federal agencies;

(2) Integration of water conservation with State water management planning;

(3) Integration of water quantity and water quality planning;

(4) Integration of ground and surface water planning;

(5) Planning for protection and management of groundwater supplies;

(6) Planning for protection and management of instream values; and

(7) Enhanced cooperation and coordination between Federal, regional State and local governmental entities involved in water and related land resources planning and management.

§ 740.2 Definitions.

"Act" means the Water Resources Planning Act (as amended), Pub. L. 89-80, 42 U.S.C. 1962 *et seq.*

"Activities" means a series of actions and operations which address the water management problems of the State and have a specific purpose or objective. Activities are further characterized by one or more major tasks and milestones.

"Affected interests" means public and private organizations, local, tribal, State and Federal governments that may be potentially affected by the State water management planning program.

"Application" means a document submitted by a Governor or designee for consideration by the Council for a grant.

"Council" means the Water Resources Council established by section 101 of the Act.

"Designated agency" means an entity of a State designated by the Governor to act as the grant recipient

and to act as liaison with the Council for this Program.

"Fiscal year" means a 12-month period ending on September 30, unless otherwise specified.

"Governor" means the chief executive officer of a State, including the Mayor of the District of Columbia.

"Grant agreement" means a document executed by the authorized official of the Water Resources Council and by the authorized representative of the State agency designated as the grant recipient containing the agreed terms and conditions of the approved grant offer and award.

"Grant period" means a 12-month period specified in the grant agreement, which shall begin during the fiscal year as defined above, during which program funds are authorized to be expended, obligated, or firmly committed by the grantee for the purposes specified in the Act, in the grant agreement and in these guidelines.

"Land area of a State" means the land and inland water area of a State as defined and set forth in the publication "Boundaries of the United States and the Several States" Geological Survey Professional Paper 909, U.S. Government Printing Office, Washington, DC issued in 1976, or revisions thereof.

"Local government" means a local unit of government including a county municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments, sponsor group representative organization (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975) and other regional or interstate government entity; or any agency or instrumentality of a local government exclusive of institutions of higher education and hospitals.

"Milestones" mean key events in the activity implementation schedule. Milestones indicate important dates for design implementation and monitoring tasks. Examples of milestones include but are not limited to hiring of key staff, publication dates, workshop dates, or the completion of specific phases of the implementation schedule.

"Obligation" means orders placed, contracts awarded, grants issued, services received and similar transactions during a given period that require the disbursement of money.

"Per capita income of a State" means the most recent year of official U.S. Department of Commerce per capita income figures for the State.

"Program period" means the period beginning on October 1, 1980, and extending through the authorized life of the Program.

"Program funds" means grant funds provided under the Act, non-Federal funds and the value of in-kind contributions used for matching purposes.

"Population of a State" means the latest official resident population estimate by the U.S. Department of Commerce available on or before January 1, of the year preceding the fiscal year for which funds under this part are appropriated.

"Related land resources" means any land affected by present or projected management practices causing significant effects on the quantity or quality of the water resource.

"State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or the Commonwealth of the Northern Mariana Islands.

"State water management planning" means those activities necessary to effect coordinated decisions for the use of water and related resources within a State or interstate region; which provide for the correction or prevention, respectively, of present and future water and related land resources problems; which consider the potential for water and related land resources use from the standpoint of present and future needs; and which provide for involvement of affected interests. Water management planning activities may include, but are not limited to, planning, data collection and analysis, studies and investigations, program design and coordination, development of regulation and enforcement programs, information dissemination, public meetings, and the coordination of the program with other related programs.

"Task" means a specific action or operation which comprises a part of the implementation effort for an activity.

"Water conservation" means activities designed to (1) reduce the demand for water, (2) improve efficiency in use and reduce losses and waste of water, or (3) improve land management practices to conserve water.

"Water management planning need" is defined as the basis for establishing criteria for assessing each State's need for assistance under the Program.

"Work Plan" means a document listing the major program elements to be performed under the program during each grant period which presents, in chronological order, the major activities and tasks in the program element; which targets major milestones or proposed accomplishments by activity, cost and date; and which will be used in preparing reports to reflect accomplishment of goals and objectives under the participating State's comprehensive program.

§ 740.3 State applications.

(a) The Council shall invite the Governor of each State to submit a State application.

(b) To be eligible for financial assistance under this part, a State shall submit to the Council an original and two copies of a State application executed by the Governor or designee. The State application shall be submitted not later than 90 days from the date of the Council's invitation.

(c) The program application package shall consist of:

(1) The forms and instructions for completing the application;

(2) The criteria to be used by the Council in assessing need for water management planning funds;

(3) Information on the applicable Federal requirements for administering the program; and

(4) Other information pertinent to the application.

(d) A State application shall contain:

(1) The name and address of the designated State agency;

(2) A description of the comprehensive State water management planning program, or modifications thereto, as required by § 740.4(a);

(3) A work plan of the major program activities of the State water management planning program which targets milestones on a semi-annual basis;

(4) A budget and corresponding narrative in accordance with the forms and instructions provided by the Council;

(5) A notice of concurrence by the State clearinghouse in accordance with the Office of Management and Budget (OMB) Circular A-95;

(6) The manner in which the general public is involved in the development and modification of the State program; and

(7) A brief description of activities, in order of priority, which would be carried out if additional funds were made available during the grant period under the provisions of § 740.6(e). This may include supplementing or complementing ongoing activities described in paragraph (d)(3) of this section.

(e) The Governor or designee may request an extension to the submission date by submitting a written request to the Council not less than 30 days prior to the date referred to in paragraph (b) of this section. The extension shall be granted only if, in the Council's judgment, acceptable and substantial justification is shown and the extension would further the objectives of the Act. An extension shall not be granted for more than 30 days.

§ 740.4 State water management planning program.

(a) A State shall submit a description of its proposed State program with the State application, which shall:

(1) Describe water and related land resources problems, needs and opportunities, and the priorities proposed for their resolution;

(2) Specify the goals and objectives which reflect the water resources policy of the State and which address the major problems which are of concern to the State;

(3) Describe the major elements of the State water management program, which should address but not be limited to:

(i) The integration of water quantity and water quality planning and management;

(ii) The protection and management of instream values;

(iii) The protection and management of groundwater supplies;

(iv) The integration of ground and surface water planning and management; and

(v) Water conservation.

(4) Identify Federal, State, or local government, or public or private organizations that will participate and a general description of how they are involved in the managment planning process;

(5) If provisions are made for pass-through of funds, describe the *process* by which recipients will be selected, and the purpose of the pass-through; and

(6) List existing or proposed administrative, legal and/or institutional arrangements to be used in coordinating intrastate, interstate and regional water resources planning activities involving State, local and/or the Federal Government with the proposed water management planning program of the State to assure that all such activities are considered in program implementation.

§ 740.5 Review and approval of State applications and programs.

(a) The Council shall review and approve each State application for financial assistance if it is determined that:

(1) The State water management planning program meets the objectives of the Act;

(2) The State application and the State water management planning program meet the requirements of this part; and

(3) Progress on the previous grant period's work plan is satisfactory, based on the requirements set forth by the Council.

(b) Based on the review of the application, the Council shall determine the amount of funds to be made available pursuant to § 740.6 and shall notify the designated agency in each participating State of the grant award as soon as possible after funds are apportioned for Council use.

(c) If an application is not approved by the Council, it shall be returned by registered mail with a full explanation of the reasons for that determination. The State shall then be allowed the opportunity to submit a revised application within 30 days after receipt by the State of such notification. Should the State determine that further review is required by the State clearinghouse under OMB Circular A-95, an additional 30 days will be allowed.

(d) If the grant amount requested by a State differs from the grant amount offered by the Council, the Council will request the designated State agency to submit a revised budget and work plan with the acceptance of the grant offer.

(e) The State, upon acceptance of the terms and conditions of the notice of grant award, as presented by the Council, will be granted financial assistance in the amount of the approved final budget.

(f) The work plan for the State water management planning program may be revised at any time by submitting revisions to the work plan and budget to the Council for approval in connection with any proposed significant change (an addition or deletion of major activities specified in the approved work plan) with appropriate provision for A-95 State clearinghouse review. The Council will review the proposed revision and notify the State of its decision no later than 30 days from the date of receipt of the request.

§ 740.6 Financial assistance.

(a) The Council shall provide financial assistance from funds available for each fiscal year to each State having an approved application pursuant to § 740.5.

(b) Within the provisions prescribed by paragraphs (c) and (d) of this section, the Council may grant up to 50 percent of the cost for a State program.

(c) The funds appropriated pursuant to the Act for the fiscal year shall be allocated among the participating States as follows, except that under paragraphs (d) (2) through (4) of this section no State shall be granted a greater or lesser sum of funds which shall be based upon a procedure in which each of the factors of population, land area, and the reciprocal of

per capital income, are adjusted such that:

(1) Those States having observations two standard deviations below the mean of each respective factor are equated to the mean-minus-two standard deviations, and

(2) Those States having observations two standard deviations above the mean of each respective factor are equated to the mean-plus-two standard deviations.

(d) Financial assistance for the Program shall be allocated among the participating States from funds available for any fiscal year based on the following formula:

(1) An equal share not to exceed $100,000, the total of which shares shall not exceed 10 percent of the funds available for any fiscal year;

(2) One-third of the remaining balance of the funds after accounting for paragraph (d)(1) of this section in the ratio that the population of each State bears to the population of all States;

(3) One-third of the remaining balance of the funds after accounting for paragraphs (d)(1) and (2) of this section in the ratio that the land area of each State bears to the land area of all the States;

(4) One-third of the remaining balance of funds after accounting for paragraphs (d)(1), (2), and (3) of this section in the ratio that the reciprocal of all per capital income of a State bears to the sum of the reciprocals for all States; and

(5) The remainder of the funds according to the need for water management planning in each State as expressed by the State and assessed by the Council. In assessing need for water management, the Council shall utilize established criteria, the proposed program, and information made available during program review.

(e) Redistribution of grant funds may occur:

(1) If a State fails to apply for a grant within the period specified in § 740.3, or is unable to match the total allocation reserved under § 740.6(d) for that State, that portion of the reserved allocation will be withdrawn by the Council;

(2) If a State fails to obligate Federal funds within the grant period of the approved or amended grant agreement as prescribed in § 740.7(c), such funds shall be returned to the Council not later than 30 days after submission of the Financial Statement for the grant period unless the Council, based on written request, grants an exception or extension to this time limitation;

(3) Funds available under paragraph (e)(1) of this section shall be available for redistribution to those States requesting additional funds pursuant to § 740.3(d)(7). These funds shall be distributed on the basis of proposals in the application, and the relationship of the State's original allocation to the original allocation of other States requesting redistribution funds; and

(4) Funds available under paragraph (e)(2) of this section shall be added to funds available for distribution for the next fiscal year, if the appropriation legislation for the current year allows such action.

§ 740.7 Administration of financial assistance.

(a) Grants under this part shall comply with the requirements of:

(1) Office of Management and Budget (OMB) Circular A-102, Revised, (34 CFR Part 256), entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;"

(2) Federal Management Circular (FMC) 74-4 (34 CFR Part 255), entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(3) OMB Circular A-73 (34 CFR Part 251), entitled "Audit of Federal Operations and Programs;"

(4) OMB Circular A-95, entitled "Evaluation, Review and Coordination of Federal and Federally assisted Programs and Projects;"

(5) Treasury Circular (TC) 1075, entitled "Regulations Governing Withdrawals of Cash from the Treasury for Advances under Federal Grants and other Programs;"

(6) TC 1082, entitled, "Notification to States of Grants-in-Aid Information"; and

(7) Other procedures which the Council may from time to time pre-

scribe for the administration of financial assistance.

(b) The planning process as required by these guidelines and assisted by WRC Title III program funds shall reflect the concepts of the Council's 1979 publication, *A Unified National Program for Floodplain Management*, and the concepts of floodplain and wetlands identification, avoidance and mitigation as described in the Council's *Floodplain Management Guidelines* (43 FR 6030). In the application for financial assistance, the State shall assure the Council that the following planning concepts have been or will be integrated into the planning process:

(1) Determination of whether proposed activities would be located in floodplains or wetlands, or, even if located outside of them, would have the potential to affect floodplains or wetlands;

(2) Avoidance of performing activities within floodplains or wetlands wherever there is a practicable alternative;

(3) Where avoidance of floodplains cannot be achieved, minimization of adverse impacts and support of floodplain development, and preservation and restoration of natural and beneficial floodplain values; and

(4) Where avoidance of wetlands cannot be achieved, minimization of adverse impacts and support of new construction in wetlands, and preservation and enhancement of natural and beneficial wetlands values.

(c) Program funds must be obligated within the grant period unless the Council, based on written request, grants an exception or extension to this time limitation. The repeated occurrence of unobligated program funds at the end of the grant period will be considered in determining the need for assistance in subsequent years pursuant to § 740.6(d)(5).

(d) The procurement standards, practices, rules and policies of the State as customarily applied, if in accordance with Attachment O of OMB Circular A-102, shall govern for procurement costs incurred in an approved program.

(e) For all matching funds the sources of a State's cost share shall have no bearing on whether or not such costs can be matched by Federal funds except that:

(1) Other Federal funds or property cannot be used for matching purposes unless specifically permitted by Federal law;

(2) Program funds shall not be used to match Federal funds under any other federally aided program;

(3) Non-Federal funds used to match other federally aided programs shall not be used to match funds provided under the Act; and

(4) Federal funds provided through this program, if duly matched through the requirements of this part, may be used as non-Federal contributions for Level B studies beginning in Fiscal Year 1981.

(f) Any cost incurred for water management planning may be employed for matching a grant awarded under the Act except as specified in this section. Such expenditures must be reasonable, documentable, and directly applicable to the approved program.

(g) Program funds may not be used for:

(1) Items whose costs are not allowable under the provision of FMC 74-4;

(2) Contributions, dues or assessments to support headquarters offices of interstate commissions, compacts, councils, interagency committees, or other similar organizations;

(3) Scholarly or scientific investigations for purposes other than addressing water management problems, needs, concerns or interests specifically identified and explained in the approved program as a priority consideration;

(4) Construction, payment of subsidies, or purchase of land or easements;

(5) Purchase of equipment with a unit cost of $1,500 or more without prior approval of the Council; and

(6) Purchase of equipment with a unit cost of less than $1,500 when the cumulative cost of such equipment in any one grant period exceeds 1 percent of the grant award, without prior approval of the Council.

(h) Federal funds may not be used to substitute for State and local funds that would have been made available for water management planning programs in the absence of the grant funds provided under this part. Feder-

al funds may be used to supplement and complement existing water management planning programs. It does not prevent drawing matching shares from individual programs or from existing agency appropriations, budgets, or resources so long as expenditures are not substituted by Federal funds for the purposes of the Act.

(i) Payments shall be made in accordance with Attachment J of OMB Circular A-102 and TC 1075. Grant funds shall be requested only on an as needed basis.

(j) Financial management procedures shall comply with Attachment G of OMB Circular A-102 and with TC 1075. The applicable Federal requirements shall apply to the State and to local governments or non-governmental entities that receive funds as a subgrantee for the purposes of the Act.

§ 740.8 Reporting.

(a) The designated agency shall submit program status reports and financial statements in accordance with procedures established by the Council. Instructions and a description of the content of these reports and the appropriate forms will be provided by the Council and will be in accordance with Attachments H, I and K of OMB Circular A-102 and TC 1075.

(b) The annual program report shall be due 90 days after the end of the grant period, as specified in the grant agreement, and shall contain:

(1) A summary description of the major accomplishments and results of the water management planning activities for the year, and an explanation of any work proposed in the work plan that has not been completed;

(2) An updated activity milestone chart, for each major activity in the work plan, showing the completion dates of major tasks;

(3) For those States implementing an evaluation system, a summary of the results of the evaluation efforts on the overall program effectiveness and key water management activities;

(4) A list of publications, public information materials, and other documents prepared in whole or in part with program funds which must duly note the use of Council grant funds in the printing of these documents;

(5) Other pertinent information, including any specific need for assistance; and

(6) An annual Financial Status Report.

(c) The Report of Federal Cash Transactions, as required under the provisions of Treasury Circular 1075, is due 30 days after the end of each quarter of the grant period, as specified in the grant agreement.

§ 740.9 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required by the Council, including records which fully disclose the amount and disposition of financial assistance received; the cost of administration; the total cost of all activities for which assistance is given or used; and any data and information which the Council determines are necessary to protect the interests of the United States and to facilitate an effective financial audit and performance evaluation. The Council and the Comptroller General of the United States shall have access to any books, documents, records or receipts which the Council determines are relevant or pertinent, either directly or indirectly, to any financial assistance provided under this part. Such records shall be retained for a period of three years, which starts from the date of the submission of the annual financial status report for the grant period.

§ 740.10 Program review and assistance.

(a) Each State's program will be reviewed annually by the Council to evaluate program management and accomplishments relative to the approved work plan. The Council shall:

(1) Review progam information including the application, annual reports, and other relevant information; and

(2) Make onsite visits as frequently as practicable to review the State program to:

(i) Provide assistance in the administration of the program, and at the request of the State, specific technical assistance in water resources management;

(ii) Determine whether Council policies, procedures or guidelines need revision to more effectively administer the grant; and

(iii) Gather information on practical or innovative techniques, methodologies, or other relevant information on the program.

(b) Based on the Council's annual review of each State program, the following may occur:

(1) If the program conforms to the requirements of the Act, the State will be advised of its continued eligibility for a grant;

(2) If it appears that the program does not comply with the requirements of the Act in either design or administration, the Council shall ascertain all the relevant facts. The State shall be notified immediately of the apparent inadequacies of the program with citation of specific requirements of the Act, this part, or other relevant instructions which apparently have not been met. The State shall be given timely opportunity to be heard through the filing of written statements and personal presentations in support of their position. If the Council is satisfied that sufficient adjustments have been made in the design and operation of the program, payments to the State will be continued; and

(3) If the Council determines on the basis of all the facts that the program still does not meet the requirements of the Act, the Governor shall be notified of the decision and the reasons therefore, and that no further payments shall be made until the noted inadequacies are satisfactorily resolved.

§ 740.11 Federal/State coordination.

The Council will coordinate the program under this part with similar or related programs of other Federal agencies in an effort to achieve consistency and compatibility in the administration of Federal programs.

§ 740.12 Amendments.

The Council may amend all or portions of these guidelines in accordance with established procedures. If it does, it will:

(a) Consult with appropriate advisory groups;

(b) Publish such proposed rulemaking in the FEDERAL REGISTER; and

(c) Simultaneously provide a copy of such proposed changes to each designated agency.

§ 740.13 Supplemental instructions.

As deemed appropriate, the Council may amplify the guidelines in this part by means of supplemental instructions, and may clarify program or administrative requirements set forth in these guidelines by the means of policy bulletins.

CHAPTER VIII—SUSQUEHANNA RIVER BASIN COMMISSION

Part		Page
801	General policies	108
803	Review of projects	114

PART 801—GENERAL POLICIES

Sec.

801.0 Introduction.
801.1 Standard definitions.
801.2 Coordination, cooperation, and intergovernmental relations.
801.3 Allocations, diversions, withdrawals, and release.
801.4 Project review.
801.5 Comprehensive plan.
801.6 Water supply.
801.7 Water quality.
801.8 Flood plain management and protection.
801.9 Watershed management.
801.10 Recreation.
801.11 Public values.
801.12 Electric power generation.
801.13 Proviso.

AUTHORITY: Secs. 3.1, 3.5(1) and 15.2, Pub. L. 91-575 (84 Stat. 1509 *et seq.*).

SOURCE: 38 FR 4062, Feb. 20, 1973, unless otherwise noted.

§ 801.0 Introduction.

(a) The Governors of the States of New York, Pennsylvania, and Maryland, and a representative of the President of the United States are members of the Susquehanna River Basin Commission. The Commission is a regional governmental agency whose purpose is to effect comprehensive multiple purpose planning for the conservation, utilization, development, management, and control of the water and related natural resources of the basin, which includes part of New York, Pennsylvania, and Maryland.

(b) The Susquehanna River Basin Compact provides broad authority for the Commission to carry out basinwide planning programs and projects, and to take independent action as it determines essential to fulfill its statutory regional governmental role.

(c) The objectives of the Commission are to: (1) Develop cooperative and coordinated Federal, State, local, and private water and related natural resources planning within the basin, (2) formulate, adopt, effectuate, and keep current a comprehensive plan and a water resources program for the immediate and long-range use and development of the water resources of the basin, (3) provide for orderly collection and evaluation of data, and for the continuing promotion and conduct of appropriate research relating to water resources problems, (4) establish priorities for planning, financing subject to applicable laws, development and use of projects and facilities essential to effectively meet identified water resource needs, (5) and to maintain these resources in a viable state.

(d) The Commission shall employ a multiobjective approach recognizing national economy, regional development and environmental quality in planning for the use and development of the water resources of the basin.

(e) It is the purpose of this document to set forth the objectives of the Commission and to present certain basic policies that (1) have basinwide application, (2) are specifically pertinent to the formulation of a comprehensive plan, (3) will serve as guidelines for all agencies or individuals with planning responsibilities for the development and use of the water resources of the basin, (4) form the basis for working relationship between the Commission and other agencies having related responsibilities in the basin. This statement will be amended and updated from time to time.

§ 801.1 Standard definitions.

(a) Many terms that will be used in official Commission documents may have slightly different meanings to various groups. To avoid confusion and to increase the clarity of the meaning the Commission applies to frequently used terms standard definitions will be utilized.

(b) The Commission will use the standard definitions set forth for the terms shown in section 1.2 of the Compact,[1] and will add terms and appropriate definitions as deemed necessary.

§ 801.2 Coordination, cooperation, and intergovernmental relations.

(a) The interstate nature of the Susquehanna River Basin and the broad regional authority of the Commission require clear and effective working relationships with the States, Federal Government, and local and private sectors in all matters relating to the water resources of the basin.

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[1] Filed as part of FR Doc. 72-17234, Oct. 7, 1972.

(1) The Federal Government will be encouraged and asked to participate in water resources projects and programs having national or broad regional significance. The Commission will act to encourage local initiative to solve water resources problems within a local and regional context, but when faced with obviously needed action that is not forthcoming from other sources will act, in accordance with the Compact, on its own.

(2) The Compact provides authority for the Commission to serve in a regulatory capacity and also to act as a managing and operating agency. The Commission will exercise its regulatory authority mainly in interstate matters or where signatory authority is not being effectively exercised or where the signatory has little or no authority to act. Similarly, the Commission may manage and operate various facilities if it is determined that this is an area in which an important and necessary service can be rendered.

(3) Should it become necessary for the Commission to undertake development, management and operation of projects, arrangements for repayment of all project costs and eventual operation and maintenance costs will be appropriately prorated among the signatories or otherwise financed in accordance with the Compact.

(4) The Commission will utilize the functions, powers, and duties of the existing offices and agencies of government to the extent consistent with the Compact.

(5) In its actions the Commission will maintain a high level of public visibility. Broad government, public, and private sector commentary on Commission proposals and findings will be invited, and to the extent possible be incorporated and reflected in decisions for finalization of plans, projects, and programs having significant effect on the water resources of the basin. A concerted effort will be made to keep the Commission and its activities readily available to government and public scrutiny, and responsive to their concerns.

(b) The Commission shall exercise its regional jurisdiction in an effort to avoid and minimize conflicts and duplication of effort and shall:

(1) Cooperate with and help coordinate Federal, State, local government, and private sector efforts in all matters relating to the planning, conservation, preservation, use, development, management and control of the water resources of the basin.

(2) Develop administrative agreements, as needed, with appropriate agencies of the signatories and other agencies to facilitate achievement of the Commission's objectives and related responsibilities of other agencies by minimizing duplication of effort and maximizing the contributions the respective agencies are best able to make.

(3) Build upon present water resources planning and related activities of the signatory parties, local government, other public bodies, and the private sector and fully consider their recommendations and suggestions.

(4) Establish advisory committees as needed for specific assignments and seek meaningful liaison with sources of technical and scientific expertise.

(5) Share with interested parties results of investigations, studies, tests, and research undertaken by the Commission in an appropriate manner and form.

(6) Conduct its regular meetings announced in advance and open to the public.

(7) Depend upon existing public and private agencies for the construction, operation, and maintenance of projects except when the project is necessary to further the comprehensive plan and the responsible agency does not act or when the Commission is asked to act by one or more signatories, one or more local governments, or other responsible entities.

(8) Require that the planning of projects affecting the water resources of the basin by Federal, State, local agencies and private organizations be undertaken in coordination with the Commission and in accordance with the Compact.

(9) Require that periodic reports of projects affecting water resources within the basin and listings of discharge permits granted, and similar activities undertaken by offices or agencies of the signatory parties, be submitted to the Commission.

§ 801.3 Allocations, diversions, withdrawals and release.

(a) The extremes in availability of water in the basin means that water will not always be available when and where it is needed. One of the responsibilities of the Commission is to act upon requests for allocations, withdrawals, or diversions of water for in-basin or out-of-basin use. Water emergencies may be expected to develop in portions of the basin due to drought conditions or other causes. The Commission will act promptly to effect alleviation of the condition to the extent posible.

(b) The Commission will require evidence that proposed interbasin transfers of water will not jeopardize, impair or limit the efficient development and management of the Susquehanna River Basin's water resources, or any aspects of these resources for in-basin use, or have a significant unfavorable impact on the resources of the basin and the receiving waters of the Chesapeake Bay.

(c) The Commission may, in making decisions on allocations, diversions, withdrawals, and releases, consider the following principles among others:

(1) That allocations, diversions, or withdrawals of water be based on the common law principles of riparian rights which entitles landholders in any watershed to draw upon the natural stream flow in reasonable amounts and be entitled to the stream flow not unreasonably diminished in quality or quantity by upstream use or diversion of water; and on the maintenance of the historic seasional variations of the flows into Chesapeake Bay.

(d) When the need arises for action on requests for allocations, diversions, or withdrawals of water from either surface or ground waters of the basin the Commission shall:

(1) Allocate waters of the basin to and among the signatory States to the Compact as the need appears, and impose related conditions, obligations, and release requirements.

(2) Determine if a proposed allocation, withdrawal or diversion is in conflict with or will significantly affect the comprehensive plan, and assure existing immediate and projected long term local and regional uses are protected.

(3) Impose conditions, obligations and release requirements for dams and/or diversion structures to protect prior local interests, downstream interests, and environmental quality.

(4) In the matter of drought, disasters or catastrophes, natural or manmade, which cause actual and immediate shortage of available and usable water supply, determine and delineate the area of shortage and by unanimous vote declare a state of water supply emergency therein, and impose direct controls on any and all allocations, diversions and uses of water to meet the emergency condition.

(5) In water emergencies coordinate the efforts of Federal, State, local, and other persons and entities in dealing with the emergency.

(6) Determine and delineate, after public hearing, areas within the basin wherein the demands upon supply made by water users have developed or threaten to develop to such a degree as to create a water shortage or impair or conflict with the comprehensive plan.

(7) When areas in need of protection from overdemand of safe yield of the supply have been delineated, declare such areas protected from further depletion, with the consent of the member or members from the affected State or States.

(8) Require that no person divert or withdraw from any protected area water for domestic, municipal, agricultural, or industrial uses in excess of such quantities as the Commission may prescribe by general regulation or pursuant to a permit granted heretofore under the laws of any of the signatory States.

§ 801.4 Project review.

(a) The Compact provides generally that no project affecting the water resources of the basin shall be undertaken by any person, governmental authority, or other entity prior to approval by the Commission.

(b) In many instances, one or more of the signatory parties will exercise project review authority regarding proposed projects in the basin coming

under the review of the Commission. Accordingly the Commission will direct its attention to reviewing the completeness and effectiveness of the review procedures of the signatories and will endeavor to minimize duplication of staff effort, and time and cost to the applicant.

(c) The Commission will establish exempt categories in accordance with the section 3.10-3 of the Compact, and for projects determined not to have a substantial effect on the water resources of the basin. In dealing with Federal or federally licensed projects, the Commission will take the provisions of reservations (r) and (w) of United States Pub. L. 91-575 (84 Stat. 1509) and provisions of the Compact into account.

(d) It is expected that project review procedures will be modified following adoption of the comprehensive plan. In the meantime the Commission will:

(1) Base its review and comments pertaining to proposed projects within the basin coming under the purview of the Commission, on review and comments of signatory parties. In general, the Commission review will seek to ascertain the completeness of procedures followed by the signatory parties in their review, and will refrain from specifically rechecking detailed evaluations. (Susquehanna River Basin Commission Resolution No. 72-5)

(2) Require as it determines necessary, submission of pertinent project plans and documents for its independent review and approval. The purpose of this review will be to ascertain whether all relevant provisions of the Compact and actions taken pursuant thereto have been observed:

(i) When the Commission has determined that a project may have significant effect on the water resources of the basin.

(ii) When a proposed project does not fall under the review jurisdiction of any agency of the signatory parties.

§ 801.5 Comprehensive plan.

(a) The Compact requires that the Commission formulate and adopt a comprehensive plan for the immediate and long-range development and use of the water resources of the basin.

(1) The plan will include existing and proposed public and private programs, projects, and facilities which are required, in the judgment of the Commission, to meet present and future water resources needs of the basin. Consideration shall be given to the effect of the plan, or any part of the plan, on the receiving waters of the Chesapeake Bay. The Commission shall consult with interested public bodies and public utilities and fully consider the findings and recommendations of the signatory parties, their various subdivisions and interested groups. Prior to adoption of the plan the Commission shall conduct at least one public hearing in each signatory State.

(2) The plan will reflect consideration, of the multiobjectives of national economy, regional development and environmental quality; and multipurpose use of projects.

(3) Water quantity and water quality planning will be studied together and correlated to the extent feasible, with existing and proposed land uses. The development of a basinwide land use study to enable full consideration of basic and alternative proposals to meet water resources needs will be explored.

(4) An important phase of the plan formulation process is a thorough review and evaluation of the Susquehanna River Basin Coordinating Committee Study report, pertinent plans and reports of the signatories, including water quality standards and other data available. The findings and recommendations presented in the Susquehanna River Basin Coordinating Committee Study report will be considered for incorporation in the Commission's plan to the extent they are feasible and compatible with the current and projected needs and interests.

(5) Essentially the comprehensive plan will reflect the findings of an analysis of a mix of alternative futures for industrial, agricultural, residential, and recreational development in the basin.

(6) The Commission will act diligently to promote Federal, State, local governmental, and private sector cooperation and coordination in the implementation of the adopted plan. It is

expected that recommended development programs will be undertaken by the signatories, local governmental agencies, or private interests. If expeditious action by others is not forthcoming or is not possible the Commission will act in accordance with the Compact to implement programs, projects, and standards to the extent necessary to further the aims of the comprehensive plan.

(b) The comprehensive plan shall provide for the immediate and long-range use, development, conservation, preservation, and management of the water resources of the basin. The plan will be presented in a form and order as determined by the Commission and shall include, but not be limited to the following:

(1) Statement of authority, purpose, objectives, and scope.

(2) Description of the physical and human environment.

(3) Inventory of the basin's water resources and existing developments and facilities.

(4) Projection of immediate and long-range water resources needs of the basin.

(5) Description of a general system of measures and programs, including water quality and other standards as determined necessary, and reasonable alternatives considered essential to and capable of satisfying water resources needs into the reasonably foreseeable future.

(6) Criteria used for review and acceptance of projects within the plan.

(7) Procedures for updating and modifying the plan.

(8) Necessary appendices.

§ 801.6 Water supply.

(a) The Susquehanna River Basin is rich in water resources. With proper planning and management, and with adequate public and private investment in treatment, storage, and distribution facilities, the high potential of the basin to provide water of suitable quality for a wide array of public and private purposes into the foreseeable future should be possible.

(b) The Commission may regulate the withdrawal of waters of the basin not regulated by the signatory parties for domestic, municipal, industrial, and agricultural uses if regulation is considered essential to further the aims set forth in the comprehensive plan.

(c) The Commission shall study the basin's water supply needs, the potential surface and ground water resources, and the interrelationships to meet these needs through existing and new facilities and projects. Efficient use and management of existing facilities with emphasis on the full utilization of known technology will be explored in meeting water supply needs for domestic, municipal, agricultural, and industrial water supply before new programs or projects are approved.

§ 801.7 Water quality.

(a) The signatory States have the primary responsibility in the basin for water quality management and control. However, protection of the water resources of the basin from pollution, and actions by the signatory parties to achieve abatement and control of pollution are important to the Commission.

(b) The signatory parties have adopted water quality standards for the intra and interstate waters of the basin. Initially these standards will serve as the basis for the Commission's water quality program in the comprehensive plan.

(c) The Commission's role in water quality management and control essentially will be one of coordination to ensure water quality standards are adequate to protect broad public water resources interests, and that uniform policies and enforcement are affected by the signatories.

(d) The Commission shall:

(1) Encourage and coordinate efforts of the signatory parties to prevent, reduce, control, and eliminate water pollution and to maintain water quality in accordance with established standards.

(2) Promote government and private sector implementation of maximum practical use of waste utilization and treatment technology.

(3) Promote and encourage State and local governments and industry to

plan for regional waste water treatment and management.

(4) In cooperation with appropriate agencies of the signatory parties, make periodic inspections to ascertain the state of compliance with appropriate water quality standards, and as needed establish and operate water quality monitoring stations.

[38 FR 4662, Feb. 20, 1973, as amended at 38 FR 6386, Mar. 9, 1973]

§ 801.8 Flood plain management and protection.

(a) Periodic inundation of lands along waterways has not discouraged development of flood hazards areas. Major floods cause loss of life, extensive damages, and other conditions not in the public interest. A balanced flood plain management and protection program is needed to reduce the flood hazard to a minimum.

(b) The Commission may regulate the use of flood prone lands with approval of the appropriate signatory party, to safeguard public health, welfare, safety and property, and to sustain economic development.

(c) To foster sound flood plain controls, as an essential part of water resources management, the Commission shall:

(1) Encourage and coordinate the efforts of the signatory parties to control modification of the Susquehanna River and its tributaries by encroachment.

(2) Plan and promote implementation of projects and programs of a structural and nonstructural nature for the protection of flood plains subject to frequent flooding.

(3) Assist in the study and classification of flood prone lands to ascertain the relative risk of flooding, and establish standards for flood plain management.

(4) Promote the use of flood insurance by helping localities qualify for the national program.

(5) Assist in the development of a modern flood forecasting and warning system.

§ 801.9 Watershed management.

(a) The character, extent, and quality of water resources of a given watershed are strongly affected by the land use practices within that watershed. Accordingly the Commission will maintain close liaison with Federal, State, and local highway, mining, soil, forest, fish and wildlife, and recreation agencies and with government agencies dealing with urban and residential development programs.

(b) The Commission shall: (1) Promote sound practices of watershed management including soil and water conservation measures, land restoration and rehabilitation, erosion control, forest management, improvement of fish and wildlife habitat, and land use in highway, urban, and residential development as related to water resources.

§ 801.10 Recreation.

(a) The use of surface water resources of the basin for recreation purposes is extensive. Swimming, fishing, boating, and other water oriented activities have regional and local economic benefit as well as recreational benefit.

(b) The Commission shall cooperate with public and private agencies in the planning and development of water-related recreation and fish and wildlife programs and projects within the basin and shall:

(1) Promote public access to and recreational use of existing and future public water areas.

(2) Promote recreational use of public water supply reservoirs and lakes where adequate treatment of water is provided, and/or where recreational uses are compatible with primary project purposes.

(3) Include recreation as a purpose where feasible, in multipurpose water use planning of reservoirs and other water bodies.

§ 801.11 Public values.

(a) The basin has many points of archeological and historic interest, and is well endowed with vistas of aesthetic significance.

(b) The Commission fully recognizes that the value of these areas cannot be measured simply in economic terms and will strive to preserve and promote them for the enjoyment and en-

richment of present and future generations.

(c) The Commission shall: (1) Seek the advice and assistance of appropriate societies and governmental agencies in the identification of archeological, historic, and scenic areas and unique lands in any planning or development affecting these attributes of the basin.

§ 801.12 Electric power generation.

(a) Significant uses are presently being made of the waters of the basin for the generation of electric power at hydro, pumped storage, and thermoelectric generating stations. Increased demands for electric power throughout the East Coast can be expected to result in proposals for the development of additional electric power generating stations located either in the basin or nearby its borders.

(b) There appears to be limited site potential in the basin for additional hydroelectric generation, and considerable potential for additional pumped storage and thermoelectric generation. The direct and indirect effects of existing and proposed electric generation projects will be considered by the Commission. Items of concern will include consumptive uses of water, alteration of natural stream regimen, effects on water quality, and on the other uses of the streams affected.

(c) The Commission, in cooperation with appropriate agencies of the signatory parties, and with other public and private agencies shall:

(1) Conduct a thorough review of applications to relicense existing electric power generating projects and facilities, and applications to amend existing licenses to determine if the proposal is in accord with the comprehensive plan.

(2) Require that the proposed siting and location in the basin of any type of electric generating facility or any facility located outside the basin having an effect on the waters of the basin, shall be planned in direct consultation with the Commission to enable advance consideration of the possible effects of such installation on the water resources of the basin.

§ 801.13 Proviso.

(a) This part is promulgated pursuant to sections 3.1, 3.5(1), and 15.2 of the Compact and shall be construed and applied subject to all of the terms and conditions of the Compact and of the provisions of Pub. L. 91-575, 84 Stat. 1509: *Provided*, Any provision in this statement of general policies that is inconsistent with the Compact itself shall be null and void.

PART 803—REVIEW OF PROJECTS

Subpart A—Introduction

Sec.
803.1 General.
803.2 Definitions.
803.3 Projects requiring applications.
803.4 Projects requiring review.
803.5 Review by signatory parties of projects of concern to the Commission.
803.6 Effective date.

Subpart B—Application Procedure

803.20 Purpose of this subpart.
803.21 Preliminary consultations.
803.22 Submission of application.
803.23 Contents of application.
803.24 Notice of receipt of application.
803.25 Staff review.
803.26 Emergency approval.

Subpart C—Public Hearing Procedure

803.40 Public hearing requirement.
803.41 Notice of public hearing.
803.42 Participants to a public hearing.
803.43 Representative capacity.
803.44 Description of project.
803.45 Adjudicatory hearing.
803.46 Presiding officer.
803.47 Memorandum of law or fact.
803.48 Consolidation of hearings.
803.49 Joint hearings.
803.50 Transcript.
803.51 Adjournments.

Subpart D—Standards for Review

803.60 Purpose of this subpart.
803.61 Consumptive uses of water.
803.62 Groundwater withdrawals.
803.63 Water conservation requirements.

AUTHORITY: Sec. 3.4(9), 3.10, and 15.2, Pub. L. 91-575, 84 Stat. 1509 *et seq.*

SOURCE: 39 FR 41973, Dec. 4, 1974, unless otherwise noted.

Subpart A—Introduction

§ 803.1 General.

(a) The Review of Projects is one of four major elements of the Commission's program and planning system. Other major elements are the Comprehensive Plan, the annual Water Resources Program and Intergovernmental Relationships; all provided for in the Susquehanna River Basin Compact (hereinafter referred to as the "Compact") sections 14.1, 14.2 and 12.1 et seq., respectively. The Commission will utilize the four elements, as appropriate, to advance its purpose set forth in the Compact.

(b) This part establishes the scope and procedures for Review of Projects. Section 3.10 of the Compact provides the authority for Commission Review of Projects. In general, it provides that the Commission's review authority extends to (1) projects that may result in a significant interstate effect on the water resources of the Basin and (2) projects that would affect immediate and long-range alternatives for the management, development, conservation, or utilization of the Basin's water resources.

(c) No person, group of persons, association, corporation or other nongovernmental entity shall begin construction or operation of any project affecting the water resources of the basin as set forth hereafter prior to review and approval by the Commission of the project.

(d) Proposals for projects that come within § 803.3 *Projects Requiring Review*, set forth hereafter, of the Federal government, and the signatory states, their political subdivisions, and public corporations shall be submitted to the Commission for a period of ninety days or such longer time as may be requested by the Commission. The Commission shall submit recommendations and findings to the sponsoring agency which shall be included in any report submitted by such agency to its respective legislative body or to any committee thereof in connection with any request for authorization or appropriation therefor. Commission review and approval shall be required prior to construction or operation of any government project within § 803.3 that is not subject to specific authorization or appropriation by a legislative body. The Commission review will ascertain the projects' compatibility with the objectives, goals, guidelines and criteria set forth in the Comprehensive Plan.

§ 803.2 Definitions.

(a) These words shall be defined as follows unless otherwise indicated.

(1) *Basin.* The Susquehanna River Basin.

(2) *Construction.* Clearing or excavation of the site, including the driving of piles, construction of roadways and railroad spurs, and the pouring of the foundation for, or the installation of any portion of the project on the site.

(3) *Project.* Any work, service, activity, or facility undertaken which is separately planned or financed for the conservation, utilization, control, development, or management of water resources which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation.

(4) *Signatory party.* The States of Maryland, New York, Commonwealth of Pennsylvania, and the Federal government.

(5) *Signatory State.* The States of Maryland, New York, and Pennsylvania.

(6) *Sponsor.* Any person, group of persons, association, corporation, or government entity proposing a project.

(7) *Susquehanna River Basin.* The area of drainage of the Susquehanna River and its tributaries into Chesapeake Bay to the southern edge of the Pennsylvania Railroad bridge between Havre de Grace and Perryville, Maryland.

(8) *Water(s).* Surface and underground water(s) contained within the Susquehanna River Basin.

§ 803.3 Projects requiring applications.

(a) Sponsors proposing the following projects shall file an application in accordance with Subpart B of this part.

(1) Any physical facility on or crossing the boundary between any two signatory states.

(2) Any project involving either the consumptive use of water (as described in § 803.61), or the transfer of water into or from the basin.

(3) Any proposal to change interstate water quality standards or criteria.

(4) Any project within a signatory State that has the potential to affect waters within another signatory State. This includes but is not limited to projects which have the potential to alter the physical, biological, chemical, or hydrological characteristics of water and related natural resources of the following streams and/or their tributaries:

(i) Between New York and Pennsylvania

Apalachian Creek, Bentley Creek, Bulkley Brook, Camp Brook Creek, Cascade Creek, Cayuta Creek, Chemung River, Choconut Creek, Cowanesque River, Denton Creek, Holden Creek, Little Snake Creek, Seeley Creek, Snake Creek, South Creek, Susquehanna River, Tioga River, Troups Creek, Trowbridge Creek, Wappasening Creek, White Branch.

(ii) Between Pennsylvania and Maryland

Big Branch Deer Creek, Broad Creek, Conowingo Creek, Deer Creek, Falling Branch Deer Creek, Long Arm Creek, Muddy Creek, Octoraro Creek, Scott Creek, South Branch, Conewago Creek, Susquehanna River.

(5) Any project which requires the commitment of water to a specific use for a period of time longer than ten years. This includes but is not limited to projects involving such activities as discharge into or withdrawal from surface or underground water.

(i) Exemptions:

(*a*) Withdrawal of one MGD or less from any surface stream provided it, in conjunction with all other withdrawals, does not exceed at any point 25 percent of the seven (7) day, twenty (20) year low flow.

(*b*) Withdrawals by a user totaling 100,000 gpd or less from groundwater sources.

(*c*) Any discharge authorized by the rules, regulations, or a permit of a signatory party.

(6) Any project with a life expectancy of ten or more years designed to satisfy a water resource related need. This includes projects such as: Dams, levees, walls, or channel modifications.

(i) Exemptions:

(*a*) Farm ponds.

(*b*) Levees, walls and channel modifications less than 500 feet in length or stream clearance activities conducted in accordance with Commission guidelines.

(*c*) Dams which control a drainage area of less than ten square miles except for water supply dams developing less than 80 percent of the one hundred eighty (180) day average annual low flow if such low flow is greater than 100,000 gpd.

(7) Any project or projects not included in paragraphs (a)(1) through (6) of this section determined by the Commission to have a potential adverse, adverse cumulative, or interstate effect on the water resources of the basin; *Provided*, That the project sponsor is notified in writing by the Commission that an application is required.

(b) If a sponsor is uncertain whether an application should be filed with the Commission the sponsor may request and, within thirty days after submission of information in such form and manner as will allow the Commission to make the determination, receive from the Commission a letter stating whether an application is required.

(c) For additional application and review procedures for projects, see Subparts B and C of this part.

[39 FR 41973, Dec. 4, 1974, as amended at 41 FR 43135, Sept. 30, 1976]

§ 803.4 Projects requiring review.

(a) As determined from applications or otherwise, the Commission shall review and take appropriate action on the following proposed projects within the Susquehanna River Basin.

(1) Any physical facility on or crossing the boundary between any two signatory states.

(2) Any project involving either the consumptive use of water (as described in § 803.61), or the transfer of water into or from the basin.

(3) Any project within a signatory state found and determined by the Commission to have a significant effect on water within another signa-

tory state or upon the Comprehensive Plan.

(b) Any project or projects determined by the Commission or by a signatory party to cause an adverse, adverse cumulative, or an interstate effect on the water resources of the basin; *Provided*, The project sponsor has been notified in writing by the Commission or a signatory party that Commission review and action is required.

[39 FR 41973, Dec. 4, 1974 as amended at 41 FR 43135, Sept. 30, 1976]

§ 803.5 Review by signatory parties of projects of concern to the Commission.

(a) The Commission recognizes that agencies of the signatory parties will exercise their review authority and evaluate many proposed projects in the Basin. The Commission will develop guidelines to assure compatibility between signatory review and Commission review.

(b) To avoid duplication of work and to cooperate with other government agencies the Commission will develop agreements of understanding in accordance with these guidelines with appropriate agencies of the signatory parties regarding joint review of projects and acceptance of signatory review. These agreements may provide for joint efforts by staff, delegation of authority by an agency or the Commission, or any other matter to support cooperative review activities. Permits issued by a signatory agency shall be considered Commission approval if issued pursuant to an agreement of understanding with the Commission specifically providing therefor.

§ 803.6 Effective date.

(a) Review by the Commission shall not be required for any project which, prior to the effective date of this part, has (1) been issued a permit by a signatory party allowing completion through the project's final construction phase, or (2) commenced operation or been issued a permit by a signatory party allowing it to commence; unless, the project's sponsor is notified as provided in § 803.4(b).

(b) This part shall become effective June 1, 1975.

Subpart B—Application Procedure

§ 803.20 Purpose of this subpart.

The purpose of this subpart is to set forth procedures governing applications required by § 803.3.

§ 803.21 Preliminary consultations.

(a) Any sponsor of a proposed project that is subject to the Commission's review jurisdiction under § 803.4 is encouraged, prior to making application for Commission review, to request a preliminary consultation with the Commission staff for an informal discussion of preliminary plans for the proposed project. To facilitate preliminary consultations, it is suggested that the sponsor provide a general description of the proposed project, the project site and, to the extent available, data concerning dimensions of any proposed structures and the environmental impacts.

(b) Preliminary consultations shall be optional with the project sponsor and shall not relieve the sponsor from complying with the provisions of the Susquehanna River Basin Compact or with these Rules and Regulations.

§ 803.22 Submission of application.

(a) Projects requiring a permit or other form of regulatory approval from a state or federal agency having authority regarding water resources use, development, control and conservation.

(1) The sponsor of the project shall make application to the agency in the manner prescribed by the agency.

(2) It shall be the responsibility of the agency to transmit a copy of the application to the Commission.

(b) Projects not subject to the jurisdiction of the above agencies.

(1) The sponsor of the project shall, prior to the time the project is undertaken, make application to the Commission for review. The application shall be submitted to the Commission at its headquarters, and shall contain the information prescribed in § 803.23.

§ 803.23 Contents of application.

(a) Projects requiring a permit or other form of regulatory approval from a state or federal agency having

regulatory authority regarding water resources use, development, control and conservation.

(1) The sponsor of the project shall make application to the agency in the form prescribed by the agency.

(b) Projects not subject to the jurisdiction of the above agencies.

(1) The sponsor's application shall address the aspects pertinent to the project listed in paragraph (c) of this section.

(2) A report(s) about the project prepared for any other purpose will be accepted by the Commission: *Provided*, The report(s) addresses the aspects pertinent to the project listed in paragraph (c) of this section.

(c) The sponsor's application shall address those aspects contained in the following list if applicable to the project.

(1) Identification of sponsor(s) and name of person to contact authorized to speak for the sponsor.

(2) Description of project and site in terms of:

(i) Engineering feasibility.

(ii) Willingness of sponsor(s) to fund the project or action.

(iii) Identification and description of reasonable alternatives, the extent of their economic and technical investigation, and an assessment of their potential environmental impact.

(iv) Supporting studies, reports and other information upon which assumptions and assertions have been based.

(v) Compatibility of proposed project with existing and anticipated uses.

(vi) Plans for avoiding or compensating for consumptive use during low flow periods.

(vii) Current conditions and anticipated impact of the proposed project on the following:

(*a*) Flood Damage potential:

(*1*) Location of project with respect to the flood plain and flood hazard zones.

(*b*) Groundwater characteristics:

(*1*) Quality.

(*2*) Existing water table.

(*3*) Groundwater flow.

(*4*) Safe yield.

(*5*) Natural recharge.

(*c*) Surface water characteristics:

(*1*) Quality.

(*2*) Quantity.

(*3*) Flow regimen.

(*4*) Other hydrologic characteristics.

(*d*) Recreation Potential.

(*e*) Fish and Wildlife:

(*1*) Habitat quality.

(*2*) Kind and number of species.

(*f*) Natural Environment Uses:

(*1*) Scenic vistas.

(*2*) Natural and man-made travel corridors.

(*3*) Wild and wilderness areas.

(*4*) Wild, scenic and recreation rivers.

(*g*) Site development considerations:

(*1*) Geology.

(*2*) Topography.

(*3*) Soil Characteristics.

(*4*) Adjoining and nearby land uses.

(*5*) Adequacy of site facilities.

(*h*) Historical, cultural and archaeological.

(3) Governmental considerations:

(i) Need for governmental services or finances.

(ii) Commitment of government to provide services or finances.

(iii) Status of application with other governmental regulatory bodies.

(4) Project completion date.

§ 803.24 Notice of receipt of application.

The Commission shall promptly issue a notice to area and regional news media that an application has been received.

§ 803.25 Staff review.

The Commission's staff shall review the application, and if necessary, request the sponsor to provide any additional information that is deemed pertinent for proper review of the project. The staff review shall include:

(a) Determination of completeness of the application.

(b) Identification of the issues.

(c) Assessment of the project.

(d) Consultation with sponsor—if requested.

(e) Report of findings and recommendations to Commission.

§ 803.26 Emergency approval.

Whenever, in the judgement of the Executive Director, there exists an emergency situation where delay in project review will affect adversely the

public health, public welfare, protection of property or the environment, he may, after consultation with the Chairman and the member of the signatory state in which the project is located and any affected signatory state, act to approve a project on behalf of the Commission under these regulations; provided, however, that the Commission must ratify the Executive Director's action at the next regular meeting of the Commission or the said action shall be considered invalid.

[50 FR 12241, Mar. 28, 1985]

Subpart C—Public Hearing Procedure

§ 803.40 Public hearing requirement.

A public hearing shall be conducted if the Commission determines that (a) the project should or must be included in the Comprehensive Plan, (b) a hearing is requested by a signatory party, or (c) a hearing is necessary for proper evaluation of the project. Hearings will be held whenever, in the judgement of the Commission, substantive requests or questions are received that are related to public safety, protection of the environment, or other important societal factors.

§ 803.41 Notice of public hearing.

At least thirty days before any public hearing, notices stating the date, time, place and purpose of the hearing including issues of interest to the Commission shall be published at least once in a newspaper or newspapers of general circulation in the area affected, posted at the office of the Commission, and mailed to persons, organizations and government agencies who have made written requests to the Commission for notices of hearings or of a particular hearing; the Directors of the Federal Register, Pennsylvania Bulletin, and the Maryland Register for publication.

§ 803.42 Participants to a public hearing.

(a) Hearings shall be open to the public. Participants to a public hearing shall be the project sponsor and the Commission staff. Participants may also be any person or public agency wishing to appear at the hearing and make an oral or written statement. Statements may favor or oppose the project or may simply express a position without specifically favoring or opposing the project. Statements shall be made a part of the record of the hearing, and written statements may be received up to and including the last day on which the hearing is held, or within a reasonable time thereafter as specified by the presiding officer which time shall be not less than two weeks nor more than four weeks, except that a longer time may be specified if requested by a participant.

(b) Participants (except the project sponsor and the Commission staff) are encouraged to file with the Commission at its headquarters written notice of their intention to appear at the hearing. The notice should be filed at least three days prior to the opening of the hearing.

§ 803.43 Representative capacity.

Participants wishing to be heard at a hearing may appear in person or be represented by an attorney or other representative. A public agency or a local government may be represented by one of its officers, employees or by a designee of the public agency or local government. Any person intending to appear before the Commission in a representative capacity on behalf of a participant shall give the Commission written notice of the nature and extent of their authorization to represent the person(s), public agency or local government on whose behalf they intend to appear.

§ 803.44 Description of project.

When notice of hearing is issued, there shall be available for inspection at the Commission offices such plans, summaries, maps, findings, statements, orders or other supporting documents which explain, detail, amplify, or otherwise describe the project the Commission is considering. Instructions on where and how the documents may be obtained will be included in the notice.

§ 803.45 Adjudicatory hearing.

The Commission, upon application by any interested party and in its ab-

solute discretion, may determine that any hearing or additional hearing shall be conducted as an adjudicatory hearing and may specify that all testimony to be received be given under oath, the right of cross-examination be allowed, motions appropriate to such proceedings be allowed, or otherwise regulate the hearings and the conduct of the parties and their counsel.

§ 803.46 Presiding officer.

The hearing shall be conducted by the Commission or any member or designee of the Commission. The presiding officer shall have full authority to control the conduct of the hearing and make a record of the same.

§ 803.47 Memorandum of law or fact.

The presiding officer may request from participants or participants may on their own initiative provide a memorandum for the record to assure the proper evaluation of issues of law or fact identified in the hearing. The memorandum shall be provided by the participant to the Commission and the project sponsor within 15 days from the end of the hearing or such time as the presiding officer shall provide. Any such memoranda will be at the Commission's headquarters for inspection and copies will be available at the cost of reproduction.

§ 803.48 Consolidation of hearings.

The Commission may order any two or more hearings involving a common or related question of law or fact to be consolidated for hearing on any or all the matters in issue in such hearings.

§ 803.49 Joint hearings.

The Commission may conduct hearings in concert with any other agency of a signatory party.

§ 803.50 Transcript.

A verbatim transcript of the hearing shall be kept by the Commission. A certified copy of the transcript and exhibits shall be available for review during business hours at the Commission's headquarters to anyone wishing to examine them. Anyone wishing to obtain a copy of the transcript of any hearing shall make arrangements to obtain it directly from the recording stenographer at their expense.

§ 803.51 Adjournments.

The sponsor and all other persons wishing to be heard should be prepared to proceed on the date of the hearing. Application for adjournments will not be granted, except when good cause is shown.

Subpart D—Standards for Review

Source: 41 FR 43135, Sept. 30, 1976, unless otherwise noted.

§ 803.60 Purpose of this subpart.

The purpose of this subpart is to set forth standards that shall be used by the Commission to evaluate proposed projects pursuant to its authority detailed in §§ 803.1 to 803.6. This subpart does not identify all the aspects of a proposed project that will be evaluated. Nor should it be construed as a self-imposed limitation upon the Commission's authority and scope of review. These standards shall be used for review of projects in conjunction with and in addition to the Compact, Comprehensive Plan, Water Resources Program, and appropriate regulations.

§ 803.61 Consumptive uses of water.

(a) *Definitions.* For purposes of this section the words listed below are defined as follows:

(1) *Consumptive use.* Water withdrawn from its source, via a man-made conveyance system, but not directly returned thereto making it unavailable for other water users.

(2) *Dedicated augmentation.* Release from an upstream storage facility which is intended for another instream or withdrawal use.

(b) *Requirement.* (1) Compensation shall be required for consumptive uses of water during periods of low flow. Compensation is required during periods of low flow for the purposes of protection of public health; stream quality control; economic development; protection of fisheries; recreation; dilution and abatement of pollution; the prevention of undue salinity; protection of the Chesapeake Bay; and

other purposes as determined by the Commission.

(2) Consumptive uses by a project not exceeding 20,000 gpd from a total withdrawal of less than 100,000 gpd from surface or groundwaters are exempt from the requirement unless such uses adversely affect the purposes outlined in paragraph (b)(1) of this section.

(c) *Method of compensation.* (1) Methods of compensation acceptable to the Commission will depend upon the character of the project's source of water supply and other factors noted below.

(i) *Stream source.* Compensation in an amount equal to the project's total consumptive use shall be required when the stream flow at the point of taking equals or is anticipated to equal the low flow criterion which is the 7-day 10-year low flow plus the project's total consumptive use and dedicated augmentation. The Commission reserves the right to apply a higher low flow criterion for a particular stream reach when it finds, as the result of evidence presented at a public hearing, that it is needed to serve the purposes outlined in paragraph (b)(1) of this section.

(ii) *Groundwater source.* Compensation shall be required for consumptive use from aquifers hydraulically related to stream flows when the stream flow is less than the applicable low flow criterion. For the purposes of implementing this regulation, withdrawals from limestone or unconsolidated alluvial aquifers shall be considered hydraulically related to surface stream flows.

(iii) The required amount of compensation shall be provided by the applicant or project sponsor at the point of taking or another appropriate site if satisfactory evidence is presented that the purposes outlined in paragraph (b)(1) of this section are not adversely affected thereby. If compensation is to be provided upstream from the point of taking such compensation shall maintain the flow downstream from the point of taking in the amount which would exist naturally, plus any other dedicated augmentation, were there no consumptive use by the project and no replacement therefor. Compensation may be provided by one, or a combination of the following:

(*a*) Construction or acquisition of storage facilities.

(*b*) Purchase of available water supply storage in existing public or private storage facilities, or in public or private facilities scheduled for completion prior to completion of the applicant's project.

(c) Purchase of water to be released as required from a water purveyor.

(*d*) Releases from an existing facility owned and operated by the applicant.

(*e*) Other alternatives.

(2) Alternatives to compensation may be appropriate such as discontinuance of that part of the project's operation that consumes water, imposition of conservation measures, or utilization of an alternative source that is unaffected by the compensation requirement.

(3) The Commission shall, in its sole discretion, determine the acceptable alternatives to or manner of compensation for consumptive uses by a project. Such a determination will be made after considering the project location, anticipated amount of consumptive use and its effect on the purposes set forth in paragraph (b)(1) of this section, and any other pertinent factors.

(d) *Quantity of consumptive use.* For purposes of evaluating a proposed project the Commission shall require estimates of anticipated consumptive use from the project sponsor. The Commission, as part of the project review, shall evaluate the proposed methodology for monitoring consumptive losses and compensating flows including flow metering devices, stream gages, and other facilities used to measure the consumptive use of the project or the rate of streamflow. If the Commission determines that additional flow measuring devices are required these shall be provided at the expense of the applicant and shall be subject to inspection by the Commission at any time. When the project is operational, the project sponsor shall be responsible for determining when compensation is required and shall notify the Commission immediately when compensation releases commence and cease. The project sponsor shall provide the Commission with

39-060 O—89——5

periodic reports in the time and manner as it requires showing actual consumptive uses associated with the project. The Commission may use this data to modify, as appropriate, the magnitude and timing of the compensating releases initially required when the project was approved.

(e) *Quality of compensation water.* The physical, chemical and biological quality of water used for compensation shall at all times meet the quality requirements for the purposes listed in paragraph (b)(1) of this section, as applicable.

(f) *Effective date.* This section shall apply to all consumptive uses initiated since January 23, 1971. Any project that has initiated consumptive use after the effective date is subject to this requirement. Such users or projects which will begin consumptive uses in the near future must comply with the requirement within a time period to be set by the Commission for individual projects.

§ 803.62 Groundwater withdrawals.

Any project sponsor proposing to withdraw groundwater from a single well or a well field in excess of 100,000 gpd shall comply with the following requirements:

(a) *Drilling report.* Upon completion of the production well(s) the project sponsor shall supply the Commission with a report for each production well that includes: Drillers' log, well drilling method, depth to which the casing was set, the inside diameter of the casing, diameter of the well bore, how the well was completed (screen size and length, if any), depth to water yielding zones, approximate yield from each zone, and location on a U.S.G.S. topographic map.

(b) *Pumping test.* The project sponsor shall conduct a minimum 72-hour constant yield or step drawdown pumping test on the production well(s) during a period of time of average or below average seasonal streamflow conditions. In general, water levels in the pumped and one or more properly spaced, hydraulically connected observation well(s) shall be recorded on a prescribed time schedule during the test and for an equal period of time following the test, as prescribed by the Commission or by the appropriate agencies of the Commission's signatory parties. Review and approval by the Susquehanna River Basin Commission of the test procedures to be used by the applicant is necessary before the test is started. The pumping rate, the drawdown and recovery water level data shall be furnished by the project sponsor upon completion of the test.

(c) *Metering.* Groundwater users shall meter and record their weekly well production. The records shall be transmitted to the Commission annually.

(d) *Monitoring.* Groundwater users shall monitor groundwater levels monthly in one or more observation wells (if available) in the area of the production well. This will indicate the range of natural seasonal fluctuation in groundwater levels and trends that may result from droughts, over pumpage of the aquifer and the effects of man's activity in the recharge areas. The observation wells should be in the same aquifer as the production well. Groundwater levels are to be measured to one-tenth of a foot, with actual depth of water related to a land surface datum line. Groundwater levels recorded by the user shall be reported to the Commission annually.

(e) *Water quality.* The groundwater users shall sample and analyze the raw water supply for submittal with the application and every 3 years thereafter. The water quality analyses shall include the following parameters: Conductance (micromhos at 25° C), pH, Arsenic (As), Aluminum (Al), Bicarbonate (HCO_3), Cadmium (Cd), Carbon Chloroform Extract (Cce), Calcium (Ca), Chloride (Cl), Chromium (Cr), Hardness (Total), Iron (Fe), Manganese (Mn), Magnesium (Mg), Nickel (Ni), Nitrate (NO_3), Potassium (K), Sodium (Na), Sulfate (SO_4), fluoride (F), Dissolved Solids (residue on evaporation at 180° C), and Zinc (Zn). If the groundwater will be used for potable purposes additional sampling and analyses shall be conducted which will conform with the national primary drinking water regulations.

(f) The Commission may, in its discretion, modify the requirements of (a), (b), (c), (d), or (e) of this section if

the essential purposes of the groundwater program continue to be served.

(g) *Conservation.* Groundwater users shall devleop a conservation program appropriate to their use that includes improved utilization of water through recycling, devices to reduce usage, quantities and frequencies, and other measures to reduce water demand. The proposed conservation program shall be submitted to the Commission for review and approval within 1 year following approval of the groundwater development.

(h) *System losses.* Grounawater users with a distribution system shall undertake a program to continuously monitor for and correct any system leaks to reduce and keep losses from the system to a minimum. This may be accomplished through metering the distribution system and, ideally, customer use. The project sponsor shall submit annual reports to the Commission accounting the measures taken to monitor and correct detected system leaks.

[43 FR 34127, Aug. 3, 1978]

§ 803.63 Water conservation requirements.

Any project sponsor proposing to withdraw water from surface or groundwater sources or both shall comply with the following requirements:

(a) Public water supply utilities. As circumstances warrant, the utility shall:

(1) Reduce distribution system losses to a level not exceeding 20 percent of the gross withdrawal.

(2) Install meters for all users and/or otherwise establish a program of water conservation that will include:

(i) The installation of water conservation devices, as applicable, by all classes of users;

(ii) Preparation and distribution of literature to customers describing available water conservation techniques; and

(iii) Implementation of a water pricing structure which encourages conservation.

(b) Industrial water users. Industrial users shall:

(1) Establish a company representative to manage plant water use.

(2) Install meters or other suitable devices or utilize acceptable flow measuring methods for accurate determination of water use by various parts of the company operation.

(3) Install flow control devices, which match the needs of the equipment being used for production.

(4) Evaluate and implement applicable recirculation and reuse practices.

(c) Agricultural irrigation. Water users for irrigation purposes shall:

(1) Utilize irrigation systems properly designed for the farm's respective soil characteristics, topography, and cropping systems.

(2) Irrigate for food crops only as necessary to achieve optimum crop production, except in periods of prolonged drought when irrigation is applied to protect against crop failure.

[44 FR 8868, Feb. 12, 1979]

CHAPTER XIII—TENNESSEE VALLEY AUTHORITY

Part		Page
1300	Ethical and other conduct standards and responsibilities of employees and special government employees	126
1301	Procedures	142
1302	Nondiscrimination in federally-assisted programs of TVA—effectuation of Title VI of the Civil Rights Act of 1964	158
1303	Equal employment opportunity—TVA contracts	168
1304	Approval of construction in the Tennessee River System and regulation of structures	187
1305	Land between the lakes	196
1306	Relocation assistance and real property acquisition policies	197
1307	Nondiscrimination with respect to handicap	206
1308	Contract disputes	216
1309	Nondiscrimination with respect to age	225
1310	Administrative cost recovery	233
1311	Intergovernmental review of Tennessee Valley Authority Federal financial assistance and direct Federal development programs and activities	235
1312	Protection of archaeological resources: Uniform regulations	238
1313	Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the Tennessee Valley Authority	250

PART 1300—ETHICAL AND OTHER CONDUCT STANDARDS AND RESPONSIBILITIES OF EMPLOYEES AND SPECIAL GOVERNMENT EMPLOYEES

Subpart A—General Provisions

Sec.
1300.735–1 Purpose.
1300.735–2 Definitions.
1300.735–3 Interpretation and advisory service.
1300.735–4 Reviewing statements of employment and financial interests.
1300.735–5 Disciplinary and other remedial action.
1300.735–6 Administration of regulations.

Subpart B—Ethical and Other Conduct Standards and Responsibilities of Employees

1300.735–11 Proscribed actions.
1300.735–12 Gifts, entertainment, and favors.
1300.735–13 Outside employment and other activity.
1300.735–14 Financial interests.
1300.735–15 Use of Government property.
1300.735–16 Misuse of information.
1300.735–17 Indebtedness.
1300.735–18 Gambling, betting, and lotteries.
1300.735–19 General conduct prejudicial to the Government.
1300.735–20 Miscellaneous statutory provisions.
1300.735–21 Sexual harassment.
1300.735–22 National origin harassment.
1300.735–23 Harrassment on the basis of race, color, religion, age, or handicap.

Subpart C—Ethical and Other Conduct Standards and Responsibilities of Special Government Employees

1300.735–31 Use of TVA employment.
1300.735–32 Use of inside information.
1300.735–33 Coercion.
1300.735–34 Gifts, entertainment, and favors.
1300.735–35 Miscellaneous statutory provisions.
1300.735–36 General conduct.
1300.735–37 Sexual harassment.
1300.735–38 National origin harassment.
1300.735–39 Harassment on the basis of race, color, religion, age, or handicap.

Subpart D—Statements of Employment and Financial Interests

1300.735–41 Employees required to submit statements.
1300.735–41a Employee's complaint on filing requirement.
1300.735–41b Interests not required to be reported.
1300.735–42 Time and place for submission of employees' statements.
1300.735–43 Supplementary statements.
1300.735–44 Interests of employees' relatives.
1300.735–45 Information not known by employees.
1300.735–46 Information prohibited.
1300.735–47 Confidentiality of employees' statements.
1300.735–48 Effect of employees' statements on other requirements.
1300.735–49 TVA regulations for special Government employees.

AUTHORITY: 16 U.S.C. 831–831dd; E.O. 11222, 3 CFR 1964–1965 Comp., p. 306 (as amended); 5 CFR 735.104. Section 1300.735–14(c) is issued in accordance with 18 U.S.C. 208(b). Sections 1300.735–21 through 1300.735–23 and 1300.735–37 through 1300.735–39 are issued under authority of 16 U.S.C. 831–831dd.

SOURCE: 33 FR 224, Jan. 6, 1968, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

Subpart A—General Provisions

§ 1300.735–1 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The regulations in this part prescribe ethical and other conduct standards and responsibilities of TVA employees and special Government employees and set forth requirements for reporting on and reviewing their outside employment and financial interests.

§ 1300.735–2 Definitions.

In this part:

(a) "Employee" means an employee of TVA but does not include a special Government employee or a member of the uniformed services.

(b) "Executive order" means Executive Order 11222 of May 8, 1965.

(c) "General Manager" means the General Manager of TVA.

(d) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(e) "Special Government employee" means a "special Government employee" as defined in section 202 of Title 18 of the United States Code who is employed by TVA (i.e., an employer-employee relationship is established), but does not include a member of the uniformed services.

(f) "TVA Board" or "Board" means the Board of Directors of TVA.

(g) "Uniformed services" has the meaning given that term by section 101(3) of Title 37 of the United States Code.

§ 1300.735–3 Interpretation and advisory service.

The General Manager is designated as counselor for TVA. As such he is TVA's designee to the U.S. Civil Service Commission on matters covered by the regulations in this part; he coordinates TVA's counseling services and assures that counseling and interpretations on questions of conflict of interest and other matters covered by the regulations in this part are available to deputy counselors. He designates other officials as deputy counselors as he deems necessary. Deputy counselors are responsible for providing authoritative advice and guidance to each employee and special Government employee who seeks advice on matters covered by the regulations in this part.

§ 1300.735–4 Reviewing statements of employment and financial interests.

Each statement of employment and financial interests submitted under §§ 1300.735–41 through 1300.735–49 is reviewed as follows:

(a) A statement submitted by the General Manager is reviewed by the TVA Board.

(b) Statements submitted by employees or special Government employees reporting directly to the General Manager are reviewed by the General Manager.

(c) Statements submitted by other employees or special Government employees are reviewed by the General Manager or by officials he designates.

(d) The employee or special Government employee is provided an opportunity to explain a conflict or apparent conflict of interest.

(e) The reviewer obtains from the employee or special Government employee or from any other source such additional information as he deems advisable in any case where he determines a conflict or apparent conflict of interest may exist.

(f) A conflict or appearance of conflict of interest that is not resolved at a lower level is reported to the TVA Board through the counselor designated under § 1300.735–3.

§ 1300.735–5 Disciplinary and other remedial action.

(a) A violation of the regulations in this part may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(b) Remedial action to end a conflict or appearance of conflict of interest may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee or special Government employee of his conflicting interest;

(3) Removal from position or resignation;

(4) Disqualification for a particular assignment.

(c) Any of the foregoing actions shall be effected in accordance with applicable laws, Executive orders, and regulations.

§ 1300.735–6 Administration of regulations.

Except as specifically provided otherwise, the administration of the regulations in this part and the applicable regulations of the U.S. Civil Service Commission under the Executive order is hereby delegated to the General Manager and to offices, divisions, and officials he designates.

Subpart B—Ethical and Other Conduct Standards and Responsibilities of Employees

§ 1300.735–11 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding TVA efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a TVA decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of TVA.

§ 1300.735–12 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (e) of this section, an employee shall not solicit or accept directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with TVA;

(2) Conducts operations or activities that are regulated by TVA; or

(3) Has interests that may be substantially affected by the performance or nonperformance of his official duty.

(b) An employee may: (1) Accept a gift or favor or other thing of monetary value when the circumstances make it clear that it is an obvious family or personal relationship (such as that between the parents, children, or spouse of the employee and the employee) which motivates the gift and its acceptance rather than the business of the persons concerned;

(2) Accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) Accept food and refreshments, not lavish in kind, offered free in the course of a widely attended group function such as a reception, seminar, conference or training session, at which attendance is desirable because it will assist the employee in performing his or her official duties; however, the benefit to TVA in having the employee attend must outweigh the entertainment value of the event. The Chairman, Directors, Executive Vice President, Senior Vice Presidents, General Counsel, Inspector General, and Vice Presidents shall determine for their staffs the propriety of attendance at such functions and the acceptance of such amenities; such determinations for Senior Vice Presidents, the General Counsel, and Vice Presidents shall be made by the Executive Vice President, and determinations for the Chairman, Directors, Executive Vice President, or Inspector General shall be made by themselves with prior Designated Agency Ethics Official consultation. All such determinations required by this § 1300.735–12(b)(3) shall be made in advance and shall take into account whether the timing or circumstances of the event and the sponsor's current relationship with TVA might create an appearance of impropriety;

(4) Accept local transportation while on official business when no provision for individual payment can be made and alternative arrangements are clearly impracticable such as transportation from an airport to a remote site for business purposes;

(5) Accept loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees such as home mortgage loans; and

(6) Accept unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor § 1300.735–13 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B–128527 of the Comptroller General dated March 7, 1967.

[33 FR 224, Jan. 6, 1968. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 40217, Oct. 14, 1988]

§ 1300.735–13 Outside employment and other activity.

(a) An employee shall not engage in outside employment or other outside activity, including holding a State or local government office, not compatible with the full and proper discharge of the duties and responsibilities of his TVA employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest.

(2) Outside employment which tends to impair the employee's mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner.

(3) Outside employment which would conflict with or reduce the employee's effectiveness in his TVA job or adversely affect TVA's relations with the public.

(b) An employee may not accept outside consulting work without prior TVA approval. Employees who perform consulting work for others, do so in accord with concepts and policies followed by TVA as an agency in the particular subject-matter field. For purposes of this section, consulting work is that which involves primarily the provision of expert judgment and advice to others, as contrasted with direct work performance.

(c)(1) An employee may not receive any salary, or any contribution to or supplementation of salary, as compensation for his service as an employee from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality (18 U.S.C. 209).

(2) The above provision does not prevent an employee from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(d) Employees may engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, or the regulations in this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the General Manager, after obtaining prior concurrence of the Board, gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(e) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law or TVA policy.

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

[33 FR 19168, Dec. 24, 1968. Redesignated at 44 FR 30682, May 29, 1979]

§ 1300.735–14 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his TVA duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his TVA employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by TVA so long as it is not prohibited by law, the Executive order, or the regulations in this part.

(c) In accordance with the provisions of 18 U.S.C. 208(b)(2) (1982), TVA has exempted the following financial interests of its employees from the requirements of 18 U.S.C. 208(a) upon the ground that such interests are too remote or too inconsequential to affect the integrity of such employees' services. When any of the following exemptions applies only to a limited range of official actions, rather than all official acts, the range of actions will be specified within the language of the exemption.

(1) An investment in a business enterprise in the form of ownership of bonds, notes, and other evidences of indebtedness which are not convertible into shares of preferred or common stock and have no warrants attached entitling the holder to purchase stock provided that the estimated market value of the interest does not exceed $5,000;

(2) An investment in the form of shares in the ownership of enterprises, including preferred and common stocks whether voting or nonvoting, or warrants to purchase such shares, or evidences of indebtedness convertible into such shares provided that the estimated market value of the interest does not exceed $5,000 and does not exceed 1 percent of the estimated market value of all the outstanding shares of the enterprise;

(3) Shares or investments in a well-diversified money market or mutual fund;

(4) Vested interests in a pension fund arising out of former employment and to which no further contributions are being made in the employee's behalf, provided that, if the pension plan is a defined benefit plan, the assets of the plan are diversified. For the purpose of this provision, payments are not considered to be made "in the employee's behalf" if they are made solely to maintain adequate plan funding rather than to provide specific benefits for the employee; or

(5) The interest an employee has by virtue of his or her personal or family use of electric power or through his or her interests in an organization using electric power generated or distributed by TVA, for purposes of his or her official actions at TVA in the process of developing or approving TVA power rate schedules.

[33 FR 224, Jan. 6, 1968. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 40217, Oct. 14, 1988]

§ 1300.735–15 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him.

§ 1300.735–16 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in § 1300.735–13(d), directly or indirectly use, or allow the use of, official information obtained through or in connection with his TVA employment which has not been available to the general public.

§ 1300.735–17 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and

"in a proper and timely manner" means in a manner which TVA determines does not, under the circumstances, reflect adversely on TVA as his employer. In the event of a dispute between an employee and an alleged creditor, this section does not require TVA to determine the validity or amount of the disputed debt.

§ 1300.735–18 Gambling, betting, and lotteries.

An employee shall not participate, while on Government owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927 and similar TVA-approved activities.

§ 1300.735–19 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 1300.735–20 Miscellaneous statutory provisions.

Each employee shall acquaint himself with each statute that relates to his ethical and other conduct as an employee of TVA and of the Government. These statutes are as follows:

(a) House Concurrent Resolution 175, 85th Congress 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(j) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(k) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(l) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(m) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(n) The prohibitions against political activities in Subchapter III of Chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(o) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

§ 1300.735–21 Sexual harassment.

It is TVA policy that all TVA employees are responsible for assuring that the workplace is free from sexual harassment. Accordingly, all employees must avoid any action or conduct which could be viewed as sexual harassment including:

(a) Unwelcome sexual advances;

(b) Requests for sexual favors; and

(c) Other verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

[48 FR 41380, Sept. 15, 1983]

§ 1300.735–22 National origin harassment.

It is TVA policy that all TVA employees are responsible for assuring that the workplace is free from national origin harassment. Accordingly, all employees must avoid any action or conduct which could be viewed as national origin harassment, including ethnic slurs and other verbal or physical conduct relating to an individual's national origin when such conduct:

(a) Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;

(b) Has the purpose or effect of unreasonably interfering with an individual's work performance; or

(c) Otherwise adversely affects an individual's employment opportunities.

[48 FR 41380, Sept. 15, 1983]

§ 1300.735–23 Harassment on the basis of race, color, religion, age, or handicap.

It is TVA policy that all TVA employees are responsible for assuring that the workplace is free from harassment on the basis of race, color, religion, age, or handicap. Accordingly, all employees must avoid any action or conduct which could be viewed as harassment on these bases, including any verbal or physical conduct relating to an individual's race, color, religion, age, or handicap when such conduct:

(a) Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;

(b) Has the purpose or effect of unreasonably interfering with an individual's work performance; or

(c) Otherwise adversely affects an individual's employment opportunities.

[48 FR 41380, Sept. 15, 1983]

Subpart C—Ethical and Other Conduct Standards and Responsibilities of Special Government Employees

§ 1300.735–31 Use of TVA employment.

A special Government employee of TVA shall not use his TVA employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 1300.735–32 Use of inside information.

(a) A special Government employee shall not use inside information obtained as a result of his TVA employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(b) A special Government employee may teach, lecture, or write in a manner not inconsistent with the standards established for employees in § 1300.735–13(d).

§ 1300.735–33 Coercion.

A special Government employee shall not use his TVA employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

§ 1300.735–34 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee who can influence TVA's decisions in acquiring or disposing of services, equipment, materials,

or real estate, or in planning or carrying out program activities may not, while employed by TVA or in connection with his employment with TVA, receive or solicit, anything of value as a gift, gratuity, special discount, favor, entertainment, loan, or any other thing of monetary value, for himself or another person, from a person who might benefit from such decisions.

(b) A special Government employee may accept things of value described in § 1300.735–12(b) under the same circumstances and to the same extent as they may be accepted by employees.

§ 1300.735–35 Miscellaneous statutory provisions.

Each special Government employee shall acquaint himself with each statute listed in § 1300.735–20 that relates to his ethical and other conduct as a special Government employee of TVA and of the Government.

§ 1300.735–36 General conduct.

Each special Government employee shall adhere to the standards of conduct made applicable to employees by §§ 1300.735–14 through 1300.735–19.

§ 1300.735–37 Sexual harassment.

It is TVA policy that all TVA special Government employees are responsible for assuring that the workplace is free from sexual harassment. Accordingly, all special Government employees must avoid any action or conduct which could be viewed as sexual harassment including:

(a) Unwelcome sexual advances;

(b) Requests for sexual favors; and

(c) Other verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

[48 FR 41380, Sept. 15, 1983]

§ 1300.735–38 National origin harassment.

It is TVA policy that all TVA special Government employees are responsible for assuring that the workplace is free from national origin harassment. Accordingly, all special Government employees must avoid any action or conduct which could be viewed as national origin harassment, including ethnic slurs and other verbal or physical conduct relating to an individual's national origin when such conduct:

(a) Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;

(b) Has the purpose or effect of unreasonably interfering with an individual's work performance; or

(c) Otherwise adversely affects an individual's employment opportunities.

[48 FR 41380, Sept. 15, 1983]

§ 1300.735–39 Harassment on the basis of race, color, religion, age, or handicap.

It is TVA policy that all TVA special Government employees are responsible for assuring that the workplace is free from harassment on the basis of race, color, religion, age, or handicap. Accordingly, all special Government employees must avoid any action or conduct which could be viewed as harassment on these bases, including any verbal or physical conduct relating to an individual's race, color, religion, age, or handicap when such conduct:

(a) Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;

(b) Has the purpose or effect of unreasonably interfering with an individual's work performance; or

(c) Otherwise adversely affects an individual's employment opportunities.

[48 FR 41381, Sept. 15, 1983]

Subpart D—Statements of Employment and Financial Interests

§ 1300.735–41 Employees required to submit statements.

(a) The following employees must submit statements of employment and financial interests on forms TVA 9862, "Confidential Statement of Employ-

ment and Financial Interests (For Use by Employees)":

(1) All employees at TVA grade M–8 and above.

(2) Employees at TVA grades M–5, M–6, and M–7 who are in positions determined by the General Manager or an official designated by him as positions the incumbents of which are responsible for making a TVA decision or taking a TVA action in regard to:

(i) Contracting or procurement (other than contracting for the services of employees or special Government employees), including the determination of specifications to be included in procurement contracts; the evaluation of bids; the appraisal or selection of prospective bidders or of contractors; the negotiation or approval of contracts; the administration of contract provisions, including the supervision of activities performed by contractors, and the inspection of materials for acceptability;

(ii) Administering or monitoring grants or subsidies, including grants to educational institutions and other non-Federal enterprises;

(iii) Audit of financial transactions;

(iv) Regulating or auditing private or other non-Federal enterprise;

(v) Use and disposal of excess or surplus property;

(vi) Establishment and enforcement of safety standards and procedures systems; or

(vii) Any other matter having an appreciable economic impact on the interests of a non-Federal enterprise.

Employees in such positions may be excluded from the reporting requirement when the General Manager or an official designated by him determines that the duties of a position are such that the likelihood of the incumbent's involvement in a conflicts-of-interest situation is remote; or that the duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government and TVA.

(3) Employees at TVA grades M–5, M–6, and M–7 who are in positions which are determined by the General Manager or an official designated by him to have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and carry out the purpose of law, the Executive order, and the regulations in this part.

(b) The positions described in paragraphs (a) (2) and (3) of this section are identified in the appendix to this section. The appendix shall be maintained and changes therein made by TVA. Additions to, deletions from, and other amendments of the list of positions in the appendix are effective upon actual notification to the incumbents. The amended appendix shall be submitted annually for publication in the FEDERAL REGISTER.

APPENDIX

As provided in § 1300.735–41(b), employees in the following positions, which are described in § 1300.735–41(a) (2) and (3), must submit Statements of Employment and Financial Interests:

OFFICE OF THE GENERAL MANAGER

Assistant to Manager, Office, grade M–7
District Administrator, grade M–7
Chief, Staff, grade M–5

Information Office

Chief, Citizen Action Office, grade M–7
Coordinator, grade M–7
Manager, Information Services, grade M–7
Assistant Chief, Citizen Action Office, grade M–6
Chief, Broadcast/Audiovisual Staff, grade M–6
Manager, Energy Education, grade M–6
Manager, Information Services, grade M–6
Manager, Media Relations, grade M–6
Chief, Employee Communications Staff, grade M–5
Manager, Information Services, grade M–5
Manager, News Desk, grade M–5

Office of Audit and Evaluation

Assistant Chief, Branch, Corporate Industrial Engineering Branch, grade M–6
Assistant General Auditor, grade M–6
Audit Supervisor, External, grade M–6
Audit Supervisor, Internal, grade M–6
Supervisor, Program Evaluations Section, grade M–6
Industrial Engineer, grade M–5
Program Analyst, grade M–5
Supervisor, Section, grade M–5 (All)

Office of Coal Gasification

Chief, Branch, grade M-6
Assistant to the Program Manager, grade M-6
Chemical Engineer, grade M-6
Chief, Business Staff, grade M-6
Head, Group, grade M-6 (All)
Chief, Operations Staffs, grade M-5
Project Staff Engineer, grade M-5
Supervisor, Section, grade M-5 (All)
Supervisor, Staff, grade M-5 (All)

Divsion of Finance

Chief, Branch, Knoxville Accounting Branch, grade M-7
Treasurer, grade M-7
Assistant Chief, Branch, Muscle Shoals Accounting Branch, grade M-6
Assistant, Chief, Branch, Retirement Services Branch, grade M-6
Supervisor, Accounting Services, grade M-6
Supervisor, Accounting Section, grade M-5
Supervisor, Accounting Quality Assurance Section, grade M-5
Supervisor, Accounts Payable Section, grade M-5
Supervisor, Benefits Section, grade M-5
Supervisor, Distributive Services Accounting Section, grade M-5
Supervisor, Payroll Section, grade M-5

OFFICE OF THE GENERAL COUNSEL

Attorney (Community, Industrial, and Chemical Development), grade M-7
Attorney (Natural Resources Development), grade M-7
Attorney (Nuclear Regulatory and Environmental Laws and Regulations), grade M-7
Attorney (Procurement and Business), grade M-7
Attorney (Reservoir Properties, Permits), grade M-7
Attorney (Patents), grade M-6

OFFICE OF AGRICULTURAL AND CHEMICAL DEVELOPMENT

Manager's Office

Assistant to the Manager of Agricultural and Chemical Development, grade M-7
Chief, Staff, Budget and Cost Control Staff, grade M-7
Program Manager, grade M-7
Agriculturist, grade M-6
Assistant Project Manager, grade M-5
Personnel Officer, grade M-5
Supervisor, Safety Engineering Services, grade M-5

Division of Agricultural Development

Chief, Branch, grade M-7
Senior Scientist, grade M-7
Assistant to the Director of Agricultural Development, grade M-6
Assistant Chief, Branch, grade M-6
Program Manager, grade M-6 (All)
Supervisor, Section, grade M-6 (All)
Assistant to the Chief of Agricultural Research Branch, grade M-5
Supervisor, Administrative Services, grade M-5

Division of Chemical Development

Chief, Branch, grade M-7
Project Manager, grade M-7
Assistant Chief, Design Branch, grade M-6
Assistant Project Manager, grade M-6
Chief, Services, Administrative Services, grade M-6
Electrical Engineer (Contract Administration), grade M-6
Mechanical Engineer (Contract Administration), grade M-6
Civil Engineer (Contract Administration), grade M-5
Mechanical Engineer (Contract Administration), grade M-5

Division of Chemical Operations

Chief, Branch, grade M-7
Assistant Chief, Branch, grade M-6
Supervisor, Central Services Section, grade M-5

OFFICE OF ECONOMIC AND COMMUNITY DEVELOPMENT

Assistant to the Office Manager, grade M-7
Chief, Branch, grade M-7
Economist, grade M-6
Program Delivery Center Manager, grade M-6 (All)
Program Manager, grade M-6 (All)
Supervisor, Section, grade M-6 (All)
Chief, Staff, grade M-5 (All)
Coordinator, grade M-5 (All)
Economist, grade M-5 (All)
Program Coordinator, grade M-5 (All)
Program Manager, Minority Economic Development Section, grade M-5
Program Manager, Regional Studies and Mitigation Section, grade M-5
Program Manager, Skills Development Section, grade M-5
Program Manager, Program Delivery Center, Nashville, grade M-5
Program Manager, Special Opportunities Counties and Cities and Enterprise Development Section, grade M-5
Regional Planner, grade M-5
Supervisor, Section, grade M-5 (All)
Supervisor, Unit, grade M-5 (All)
Supervisor, Section, grade M-5 (All)
Supervisor, Unit, grade M-5 (All)

OFFICE OF ENGINEERING DESIGN AND CONSTRUCTION

Manager's Office

Project Staff Engineer, grade M-7 (All)
Chief, Staff, Management Systems Staff, grade M-6

Project Manager, grade M-6
Assistant Project Manager, grade M-5
Supervisor, Field Office Inspection Unit, grade M-5

Division of Engineering Design

Chief, Branch, grade M-7
Civil Engineer, grade M-7 (All)
Design Project Manager, Environmental Design Project, grade M-7
Electrical Design Project Engineer, grade M-7 (All)
Electrical Engineer, grade M-7 (All)
Geologist, grade M-7
Mechanical Design Project Engineer, grade M-7 (All)
Mechanical Engineer, grade M-7 (All)
Project Engineer, Deferred Nuclear Unit Project, grade M-7 (All)
Project Manager, grade M-7 (All)
Architect, grade M-6 (All)
Assistant to the Chief, Branch, grade M-6 (All)
Assistant Head, Group, Nuclear Steam Supply Materials and Radwaste, grade M-6
Assistant to Design Project Manager, Sequoyah and Watts Bar Design Project, grade M-6
Assistant to Project Manager, Investment Recovery Project, grade M-6
Civil Design Project Engineer, grade M-6 (All)
Civil Engineer, Administrative Services, Civil Engineering Support Branch, grade M-6
Civil Engineer, Structural Engineering Section, Civil Engineering Support Branch, grade M-6
Civil Engineer, Project Management Staff, Boiling Water Reactor Project, grade M-6
Electrical Design Project Engineer, grade M-6
Materials Engineer, grade M-6
Mechanical Design Project Engineer, grade M-6
Mechanical Engineer, Staff Specialist, Mechanical Engineering Support Branch, grade M-6
Nuclear Engineer, Nuclear Safety Analysis Staff, Nuclear Engineering Support Branch, grade M-6
Quality Assurance Engineer, grade M-6
Electrical Engineer, Communication Equipment Section, Electrical Engineering Support Branch, grade M-5
Project Engineer, Chattanooga Office Complex Project, grade M-5
Supervisor, Section, Codes, Standards, and Materials Section, grade M-5
Supervisor, Section, Contract Engineering Section, grade M-5
Supervisor, Section, Heavy Equipment Design Section, grade M-5
Supervisor, Section, Manpower Management Section, grade M-5
Supervisor, Section, NSSS, Stride, and BOP Engineering Section, grade M-5
Supervisor, Section, Nuclear Analysis Section, grade M-5
Supervisor, Section, Nuclear Steam Supply Section, grade M-5 (All)
Supervisor, Section, Quality Assurance Audit Section, grade M-5
Supervisor, Section, Quality Assurance Engineering Section, grade M-5
Supervisor, Section, Reliability and Availability Section, grade M-5
Supervisor, Section, Reprographic/Administrative Services Section, grade M-5
Supervisor, Section, Systems Analysis Section (No. 3), grade M-5

Division of Construction

Chief, Management Services Branch, grade M-7
Construction Engineer, grade M-7 (All)
General Construction Superintendent, grade M-7 (All)
Project Manager, Yellow Creek Nuclear Plant, grade M-7
Assistant Construction Engineer, Phipps Bend Nuclear Plant, grade M-6
Assistant to the Manager (Administrative), grade M-6
Chief, Project Management Services, grade M-6
Chief, Staff, grade M-6 (All)
Project Engineer, grade M-6
Supervisor, Section, Management Services Section, grade M-5
Supervisor, Unit, Warehouse Services Unit, grade M-5 (All)
Welding Engineer, grade M-5

OFFICE OF MANAGEMENT SERVICES

Labor Relations Staff

Assistant to Director of Labor Relations, grade M-7
Chief, Salary Policy Contract Administration, grade M-7
Chief, Trades and Labor Contract Administration, grade M-7
Chief, Negotiations Support Staff, grade M-6

Division of Management Systems

Chief, Branch, grade M-7
Chief, Staff, Information Resources Management Staff, grade M-7
Assistant Chief, Information Resources Management Staff, grade M-6
Chief, Management Services Staff, grade M-6
Manager, Technical Services Development Section, grade M-6
ADP Planner, grade M-5
Assistant to Chief, Systems Development Services Branch, grade M-5

Supervisor, Section, Facilities Evaluation and Acquisition, grade M–5
Supervisor, Section, Operating Services Section, grade M–5

Division of Personnel

Chief, Branch, grade M–7
Chief, Branch, grade M–6
Supervisor, Administrative Services, grade M–5

Division of Property and Services

Assistant to Director of Property and Services, grade M–7
Chief, Branch, grade M–7
Title Attorney, grade M–7
Assistant Chief, Land Branch, grade M–6
Assistant to Chief, Employee Transportation Branch, grade M–6
Coordinator, Office Service Branch, grade M–6
Librarian, grade M–6
Supervisor, Section, grade M–6 (All)
Supervisor, Services, Reprographics and Record Services Group, grade M–6
Airplane Pilot, grade M–5
Assistant to Chief, Office Service Branch, grade M–5
Building Management Specialist, grade M–5
Chief, Services, Management Services, grade M–5
District Manager, grade M–5
Supervisor, Section, grade M–5 (All)
Supervisor, Services, Reproduction and Word Processing Section, grade M–5
Supervisor, Unit, grade M–5 (All)

Public Safety Service

Supervisor, Management Services Staff, grade M–6
Supervisor, Area Operations Section, grade M–5
Supervisor, Nuclear Compliance Staff, grade M–5
Supervisor, Nuclear Operations Section, grade M–5
Supervisor, Personnel and Budget Section, grade M–5

Division of Purchasing

Assistant to the Director of Purchasing, grade M–7
Chief, Branch, grade M–7
Chief, Staff, Procurement Support Staff, grade M–7
Assistant Chief, Branch, grade M–6
Assistant Chief, Staff, grade M–6
Chief, Staff, grade M–6
Assistant Chief, Staff, Procurement Systems Staff, grade M–5
Procurement Analyst, grade M–5
Purchasing Agent, grade M–5
Supervisor, Section, grade M–5 (All)

Division of Occupational Health and Safety

Assistant to the Director of Occupational Health and Safety, grade M–7
Chief, Branch, grade M–7
Chief, Branch, Technical Support Branch, grade M–6
Supervisor, Section, grade M–6 (All)
Chief, Staff, Management Services Staff, grade M–5
Hazard Control Engineer, grade M–5
Industrial Hygienist, grade M–5
Personnel Officer, grade M–5
Supervisor, Section, grade M–5 (All)
Supervisor, Staff, Automated Data Processing Staff, grade M–5
Supervisor, Unit, grade M–5 (All)

Radiological Health Staff

Chief, Branch, Health Physics Services Branch, grade M–7
Chief, Branch, Laboratory Services Branch, grade M–6
Supervisor, Section, grade M–6 (All)
Health Physicist, grade M–5
Supervisor, Section, grade M–5 (All)
Supervisor, Unit, Health Physics Support Unit, grade M–5

Division of Medical Services

Chief, Area Medical Service, grade P–4
Chief, Branch, grade M–7
Medical Administrator, grade M–7
Assistant Medical Administrator, grade M–6
Assistant Chief, Staff, Technical Project Unit, grade M–5
Chief of Nursing, grade M–5
Personnel Officer, grade M–5
Psychologist, grade M–5
Supervisor, Section, Systems and Data Processing Section, grade M–5

OFFICE OF NATURAL RESOURCES

Air Resources Program

Chief, Program, grade M–7
Supervisor, Section, Research Section, grade M–6

Division of Land and Forest Resources

Chief, Management Services, grade M–7
Manager, Land Planning and Management, grade M–7
Manager, Resource Programs, grade M–7
Program Manager, grade M–6 (All)
Project Manager, Forest Industry Development, grade M–6
Project Manager, grade M–6 (All)
Chief Archaeologist, grade M–5
Program Manager, grade M–5 (All)
Project Manager, grade M–5 (All)
Senior Terrestrial Ecologist, grade M–5
Senior Wetland Ecologist, grade M–5
Staff Forester, grade M–5
Supervisor, Section, grade M–5 (All)

Supervisor, Staff, Data Analysis Staff, grade M–5

Land Between the Lakes

Chief, Branch, grade M–6
Assistant Chief, Branch, Recreation, Interpretation, and Environmental/Energy Education Branch, grade M–5
Civil Engineer, grade M–5
General Foreman, grade M–5
Land Use Specialist, grade M–5
Program Manager, grade M–5
Supervisor, Section, grade M–5 (All)

Division of Natural Resource Operations

Assistant to the Director of Natural Resource Operations, grade M–7
Chief, Branch, grade M–7
Manager, Operations, grade M–7
Assistant Chief, Branch, grade M–6
Chief, Branch, Laboratory Branch, grade M–6 Chief, Services, Administrative and Personnel Services, grade M–6
Program Manager, Geographic Information Services Branch, grade M–6
Supervisor, Operations, grade M–6 (All)
Civil Engineer, Data Services Branch, grade M–5
Coordinator, grade M–5 (All)
Instrument Engineer, Data Services Branch, grade M–5
Personnel Officer, grade M–5
Project Manager, Data Services Branch, grade M–5
Project Manager, Geographic Information Services Branch, grade M–5
Research Chemist, grade M–5
Supervisor, Section, grade M–5 (All)
Supervisor, Services, Administrative Services, grade M–5
Supervisor, Staff, grade M–5 (All)
Supervisor, Unit, Field Operations Eastern Area, grade M–5

Division of Water Resources

Chief, Branch, grade M–7
Assistant to the Director of Water Resources, grade M–6

OFFICE OF POWER

Power Manager's Office and Staffs

Assistant Chief, Staff, grade M–7
Head, Group, Power System and Analysis Group, grade M–7
Head, Group, Program Planning Group, grade M–7
Assistant Chief, Management Services Staff, grade M–6
Chief, Staff, Systems Planning and Development Staff, grade M–6
Power Planning Advisor, grade M–6
Supervisor, Safety Engineering Service, grade M–6

Division of Energy Conservation and Rates

Chief, Branch, grade M–7
Chief, Staff, Planning and Communication Staff, grade M–7
Assistant to Chief, Branch, grade M–6
Supervisor, Section, grade M–6 (All)
Economist, grade M–5
Project Manager, grade M–5 (All)
Research Analyst, grade M–5
Staff Rate Assistant, grade M–5
Supervisor, Section, grade M–5 (All)
Supervisor, Services, Energy Conservation and Solar Training Section, grade M–5
Supervisor, Unit grade M–5 (All)

Division of Energy Demonstrations and Technology

Chief, Branch, grade M–7
Chief, Staff, Planning and Budget Staff, grade M–7
Program Manager, grade M–6 (All)
Project Manager, AFBC Demonstration Plant Section, grade M–6
Project Manager, Systems Improvement, grade M–6
Supervisor, Section grade M–6 (All)
Coordinator, Project Management and Project Engineering, grade M–5
Mechanical Engineer, grade M–5
Personnel Officer, grade M–5
Project Coordinator, Advanced Systems, grade M–5
Project Manager, grade M–5 (All)
Research Analyst, grade M–5
Research Chemist, grade M–5
Supervisor, Section, grade M–5 (All)
Supervisor, Services, grade M–5 (All)

Division of Energy Use and Distributor Relations

Assistant to the Director, grade M–7
Chief, Branch, grade M–7
Chief, Staff, Analysis Staff, grade M–7
District Manager, grade M–7
Senior District Advisor, grade M–7
Assistant Chief, Branch, grade M–6
Assistant District Manager, grade M–6

Division of Fossil and Hydro Power

Assistant Chief, Branch, grade M–7
Chief, Branch, grade M–7
Power Plant Superintendent, Watts Bar Steam Plant, grade M–7
Superintendent, Hydro Operations, grade M–7
Assistant Chief, Branch, Plant Improvement Branch, grade M–6
Chemical Engineer, grade M–6
Environmental Engineer, grade M–6
Mechanical Engineer, grade M–6
Power Plant Superintendent, Wilson, grade M–6
Project Coordinator, Plant Equipment Branch, grade M–6

Supervisor, Industrial Safety and Fire Protection Engineering, grade M–6
Supervisor, Services, grade M–6 (All)
Power Plant Superintendent, grade M–5 (All)
Supervisor, Section, grade M–5 (All)

Division of Fuels

Chief, Branch, grade M–7
Chief, Staff, Special Projects Staff, grade M–7
Assistant Chief, Branch, grade M–6
Head, Group, grade M–6
Nuclear Engineer, grade M–6
Project Engineer, grade M–6
Fuels Engineer, grade M–5
Nuclear Engineer, grade M–5
Project Manager, grade M–5 (All)
Supervisor, Section, grade M–5 (All)
Supervisor, Staff, grade M–5 (All)
Supervisor, Administrative Services, grade M–5

Division of Nuclear Power

Chief, Branch, grade M–7
Assistant Chief, Branch, Field Services Branch, grade M–6
Chemical Engineer, grade M–6
Chief, Staff, Quality Assurance and Compliance Branch, grade M–6
Head, Group, grade M–6
Mechanical Engineer, grade M–6
Metallurgy Engineer, grade M–6
Nuclear Engineer, grade M–6
Personnel Officer, grade M–6
Supervisor, Staff, grade M–6 (All)

Operations Support

Assistant Chief, Power Projects Staff, grade M–7
Assistant to the General Manager, grade M–7
Chief, Branch, grade M–7
Program Manager, grade M–7
Superintendent, Power Service Shops, grade M–7
Assistant Quality Assurance Manager, grade M–6
Assistant Superintendent, Service Shops, grade M–6
Chief, Branch, grade M–6
Chief, Services, Central Laboratories, grade M–6
Environmental Engineer, grade M–6
Head, Group, grade M–6
Manager, QI, Project Management Corporation, grade M–6
Nuclear Engineer, grade M–6
Staff Engineer, grade M–6
Supervisor, Section, grade M–6
Assistant to the Chief, Branch, grade M–5
Assistant Supervisor, Section, grade M–5
Environmental Engineer, grade M–5
Power Supply Engineer, grade M–5
Project Manager, grade M–5
Staff Engineer, grade M–5
Supervisor, Group, grade M–5
Supervisor, Measurement Laboratory, grade M–5
Supervisor, Section, grade M–5

Power System Operations

Chief, Branch, grade M–7
Supervisor, Section, grade M–5

Transmission System Engineering and Construction

Area Construction Manager, grade M–7
Chief, Branch, grade M–7
Chief, Project Services, grade M–7
Assistant Chief, Branch, grade M–6
Civil Engineer, grade M–6
Electrical Engineer, grade M–6
General Construction Superintendent, grade M–5
Supervisor, Section Civil Engineering and Design Branch, grade M–5
Supervisor, Section Electrical Engineering and Design Branch, grade M–5
Supervisor, Section, Technical Services, grade M–5

[48 FR 54001, Nov. 30, 1983]

§ 1300.735–41a Employee's complaint on filing requirement.

An employee who believes that his position has been improperly included under the regulations in this subpart as one requiring the submission of a statement of employment and financial interests may make a complaint to that official who has been designated under § 1300.735–4 to review the employee's statement. If the employee is not satisfied with the decision by the reviewing officer on his complaint, he may complain to the reviewing officer for the next higher organizational level within TVA whose decision will be final.

§ 1300.735–41b Interests not required to be reported.

An employee is not required to report financial interests which are excluded from the disclosure requirements under § 1300.735–14(c) of this chapter which were established pursuant to section 208 of Title 18, United States Code.

[33 FR 224, Jan. 6, 1968. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 40218, Oct. 14, 1988]

§ 1300.735–42 Time and place for submission of employees' statements.

(a) An employee required to submit a statement of employment and financial interests under the regulations in this part shall submit it not later than 30 days after his entrance on duty.

(b) Statements of employment and financial interests shall be submitted as follows:

(1) A statement submitted by the General Manager shall be submitted to the Board; and

(2) Statements submitted by other employees shall be submitted to the General Manager or officials he designates.

§ 1300.735–43 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of Title 18, United States Code, the regulations under § 1300.735–14(c) of this chapter, or Subpart B of this part.

[33 FR 224, Jan. 6, 1968. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 40218, Oct. 14, 1988]

§ 1300.735–44 Interests of employees' relatives.

The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means those blood relations who are residents of the employee's household.

§ 1300.735–45 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

§ 1300.735–46 Information prohibited.

The regulations in this part do not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 1300.735–47 Confidentiality of employees' statements.

Each statement of employment and financial interests and each supplementary statement shall be held in confidence. To insure this confidentiality each official designated under § 1300.735–4 to review statements assures that the statements are maintained in confidence and that there shall not be access to, or information disclosed from, a statement except to carry out the purpose of this part. Information from a statement will not be disclosed, except as the U.S. Civil Service Commission or the General Manager may determine for good cause shown.

§ 1300.735–48 Effect of employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by

an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

§ 1300.735–49 TVA regulations for special Government employees.

(a) Except as provided in paragraph (b) of this section, each special Government employee is required to submit a statement of employment and financial interests on a TVA form entitled, "Confidential Statement of Employment and Financial Interest (For Use by Special Government Employees)," which reports:

(1) All other employment; and

(2) The financial interests of the special Government employee which relate either directly or indirectly to the duties and responsibilities of the special Government employee except such financial interests which are excluded from the disclosure requirements under § 1300.735–14(c) of this chapter which were established pursuant to section 208 of Title 18, United States Code.

(b) TVA may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special Government employee who is not a consultant or expert when TVA finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, the terms "consultant" and "expert" have the following meanings:

(1) "Consultant" means an individual who serves as an adviser to TVA as distinguished from an employee who carries out TVA's duties and responsibilities. He gives his views or opinions on problems or questions presented him by TVA, but he neither performs nor supervises performance of operating functions. Ordinarily, he is expert in the field in which he advises, but he need not be a specialist. His expertness may lie in his possession of a high order of broad administrative, professional, or technical experience indicating that his ability and knowledge make his advice distinctively valuable to TVA.

(2) "Expert" means a person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field. His knowledge and mastery of the principles, practices, problems, methods, and techniques of his field of activity, or of a specialized area in the field, are clearly superior to those usually possessed by ordinarily competent individuals in that activity. His attainment is such that he usually is regarded as an authority or as a practitioner of unusual competence and skill by other individuals in the profession, occupation, or activity.

The terms "consultant" and "expert" do not include a physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients or a veterinarian whose services are procured to provide care and service to animals.

(c) A statement of employment and financial interests required to be submitted under this section shall be submitted not later than the time of employment of the special Government employee. Each special Government employee shall keep his statement current throughout his employment by the submission of supplementary statements.

The statements of employment and financial interests and supplementary statements required of special Government employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

[33 FR 224, Jan. 6, 1968. Redesignated at 44 FR 30652, May 29, 1979, and amended at 53 FR 40218, Oct. 14, 1988]

PART 1301—PROCEDURES

Subpart A

Sec.
1301.1 Records.
1301.2 Schedule of fees.

Subpart B—Privacy Act

1301.11 Purpose and scope.
1301.12 Definitions.
1301.13 Procedures for requests pertaining to individual records in a record system.
1301.14 Times, places, and requirements for identification of individuals making requests.
1301.15 Disclosure of requested information to individuals.
1301.16 Special procedures—medical records.
1301.17 Requests for correction or amendment of record.
1301.18 TVA review of request for correction or amendment of record.
1301.19 Appeals on initial adverse agency determination on correction or amendment.
1301.20 Disclosure of record to persons other than individual to whom it pertains.
1301.21 Fees.
1301.22 Penalties.
1301.23 General exemptions.
1301.24 Special exemptions.

Subpart C—Government in the Sunshine Act

1301.41 Purpose and scope.
1301.42 Definitions.
1301.43 Open meetings.
1301.44 Notice of meetings.
1301.45 Procedure for closing meetings.
1301.46 Criteria for closing meetings.
1301.47 Transcripts of closed meetings.
1301.48 Public availability of transcripts and other documents.

Subpart A

AUTHORITY: 16 U.S.C. 831-831dd, 5 U.S.C. 552.

§ 1301.1 Records.

(a) *Records available.* TVA's records will be made available for inspection and copying upon request as provided in this section, except that records are exempt and are not made available if they are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of TVA;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from any person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with TVA, including without limitation records relating to control and accounting for special nuclear material and to the physical security plans for the protection of TVA's nuclear facilities;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institution; or

(9) Geological and geophysical information and data, including maps, concerning wells.

The availability of certain classes of nonexempt records is deferred for such time as TVA may determine is reasonably necessary to avoid interference with the accomplishment of its statutory responsibilities. Such records include bids and information concerning the identity and number of bids received prior to bid opening; all nonexempt records relating to bids between the time of bid opening and award; and all nonexempt records relating to negotiations in progress involving contracts or agreements for the acquisition or disposal of real or personal property by TVA prior to the conclusion of such negotiations. Any reasonably segregable portion of an available record shall be provided to any person requesting such record after deletion of the portions which are exempt under this paragraph.

(b) *Requests.* Requests to inspect and copy TVA records shall be directed to the Manager, Public Affairs, Governmental and Public Affairs, Tennessee Valley Authority, Knoxville, Tennessee 37902-1499. A request shall:

(1) Be in writing;

(2) State in the text that it is a request for records pursuant to the Freedom of Information Act or the regulations in this section;

(3) Reasonably describe the records requested with sufficient specificity to permit their location and identification; and

(4) Include a statement (if such is the case) that the person making the request will pay all applicable fees under § 1301.2, or a statement of the amount of the maximum applicable fee that such person is willing to pay without further notification from TVA. Requests may be made personally or by mail, but to permit expeditious processing, a mailed request should be identified on the envelope as a Freedom of Information Act request.

(c) *Processing of requests*—(1) *Initial determination.* (i) Within 10 days (excluding Saturdays, Sundays, and legal public holidays) after a request is received by TVA, and subject to paragraph (c)(3) of this section, TVA shall make an initial determination as to whether to comply with the request, and shall immediately give written notice of the determination to the person making the request. Initial determinations shall be made by the Manager, Public Affairs or the Manager, Public Affairs' designee. If the initial determination is not to comply with the request, the notice to the person making the request shall include a statement of the reasons for the denial of the request; a notice of the right of the person making the request to appeal the denial to the Vice President, Governmental and Public Affairs, and the time limits therefor; and the name and job title of the person responsible for the initial determination.

(ii) For purposes of this paragraph, a request is deemed to be received by TVA only when it is physically delivered to Governmental and Public Affairs and meets all the requirements of paragraph (b) of this section. If the request does not contain a sufficient description of the record as required by paragraph (b)(3) of this section, TVA will promptly notify the person making the request of the need for clarification, and the request will not be deemed received until clarification is obtained. If the request does not contain a statement as required by paragraph (b)(4) of this section, or if the amount of anticipated search fees exceeds the higher of the amount stated of $25, TVA will promptly notify the person making the request of the amount of the anticipated fee. Such notice shall include an offer to confer in order to determine if the request can be reformulated so as to meet the person's needs at lower cost, and the request will not be deemed received until agreement is reached concerning fees.

(2) *Appeal.* (i) If the initial determination is to deny the request, the

person making the request may appeal such action to the Vice President, Governmental and Public Affairs. Such an appeal must be taken within 30 days after the person's receipt of the initial determination and is taken by delivering a written notice of appeal to the Vice President, Governmental and Public Affairs, Tennessee Valley Authority, Knoxville, Tennessee 37902-1499. Such notice shall include a statement that it is an appeal from a denial of a request under the Freedom of Information Act and shall indicate (A) the date on which the denial was issued, and (B) the date on which the denial was received by the person making the request.

(ii) Within 20 days (excluding Saturdays, Sundays, and legal public holidays) after an appeal is received, and subject to paragraph (c)(3) of this section, TVA shall make a final determination on the appeal. In making such a determination, TVA will consider whether or not to waive the provisions of any exemption contained in paragraph (a) of this section, except that without the written permission of the person involved, TVA will not waive the exemptions contained in paragraphs (a) (4), (6) and (7) of this section. Determinations of appeals under this section shall be made by the Vice President, Governmental and Public Affairs or the Vice President's designee. If the determination on the appeal is to deny the request for records, TVA shall notify the person making the request of such determination, including the reason for the denial; a notice of the person's right to judicial review of the denial; and the name and job title of the TVA official responsible for the determination of the appeal.

(3) *Extensions of time.* (i) The 10-day time limit provided in paragraph (c)(1) of this section may be extended by TVA for unusual circumstances as set forth in this paragraph upon written notice to the person making the request specifying the reason for such extension and the date on which an initial determination is expected to be dispatched to such person. Such extension may not exceed 10 working days, and a decision to make such extension shall be made by the Manager, Public Affairs or the Manager, Public Affairs' designee.

(ii) The 20-day time limit provided in paragraph (c)(2) of this section may be extended by TVA for unusual circumstances as set forth in this paragraph upon written notice to the person appealing a denial of a request for records. The notice shall specify the reasons for the extension and the date on which a determination of the appeal is expected to be dispatched. The aggregate length of an extension under this paragraph when combined with any extension provided under paragraph (c)(3)(i) of this section shall not exceed 10 working days. A decision to make an extension under this paragraph shall be made by the Vice President, Governmental and Public Affairs or the Vice President's designee.

(iii) For the purposes of this paragraph, unusual circumstances means, to the extent reasonably necessary to the proper processing of the particular request or appeal:

(A) Time necessary to search and collect requested records from segments of the agency separate from the office processing the request;

(B) Time necessary to search for, collect, and appropriately examine the voluminous number of records demanded in a single request; or

(C) Time necessary for consultation with another agency having a substantial interest in the determination of the request, or among two or more components of the agency which have an interest in the subject matter of the request.

(d) *Manner of making records available.* When TVA determines to comply with a request for records, the records are made available promptly for inspection and copying at the place it considers most feasible. TVA will notify the person requesting the records of the place at which the records will be made available and the amount of the applicable fee pursuant to § 1301.2, and will request the person to set up a mutually convenient time for inspection. Applicable fees are payable prior to actual inspection of the records or prior to receipt of requested copies after inspection, respectively. If TVA deems it more convenient to do so, it may furnish copies of available

requested records in lieu of permitting physical inspection thereof. In such case payment of applicable fees is due within 30 days after receipt of the copies.

(e) *Publications.* TVA publishes and sells to the public at nominal cost various materials concerning its activities and other matters within its statutory responsibilities, and also provides for the sale of other materials, such as maps prepared by other agencies, at prices prescribed by such agencies. Such services are not performed under the Freedom of Information Act, and requests for the purchase of such materials are not covered by the provision of paragraphs (a) through (d) of this section. A pricelist and order form for some of the most frequently asked for TVA publications and reports are contained in form TVA 3077, which may be obtained by writing the Manager, Public Affairs, Governmental and Public Affairs, Tennessee Valley Authority, Knoxville, Tennessee 37902-1499. Information about other informational material available for sale or distribution by TVA may be obtained at the same address.

[40 FR 7326, Feb. 19, 1975; 40 FR 10668, Mar. 7, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 405, Jan. 7, 1988; 53 FR 31316, Aug. 18, 1988]

§ 1301.2 Schedule of fees.

(a) *Basis.* Except as otherwise provided in paragraph (d) of this section, TVA records available for public inspection under § 1301.1 are made available upon payment of uniform fees which will approximately cover the direct costs to TVA of searching for, duplicating, and in the case of commercial requesters, reviewing the records.

(b) *Definitions*—(1) *Search.* The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page and/or line-by-line identification of material within records, and computer searches using existing programming.

(2) *Duplication.* The term "duplication" refers to the process of making a copy of a record necessary to respond to a request. Such copies can take the form of paper copy, microform, audiovisual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others.

(3) *Review.* The term "review" refers to the initial process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release.

(4) *Commercial use request.* The term "commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether the requester properly belongs in this category, TVA will determine the use to which the requester will put the records sought. Where TVA has reasonable cause to doubt the use to which the requester will put the records sought, or where the use is not clear from the request itself, TVA may seek additional clarification.

(5) *Educational institution.* The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(6) *Noncommercial scientific institution.* The term "noncommercial scientific institution" refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(7) *Representative of the news media.* The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. News is any information that is about current events or that would be of current interest to the public. Examples of news media entities include televi-

sion or radio stations broadcasting to the public, and publishers of periodicals who make their products available for purchase or subscription by the public. A free-lance journalist may be regarded as working for a news entity if that journalist can demonstrate a solid basis for expecting publication through that entity, even though not actually employed by it.

(c) *Fees.* The following fees are applicable:

(1) *Search time charges for other than computer searches.* For time spent by clerical employees in searching files, the charge is $8.35 per hour. For time spent by supervisory and professional employees, the charge is $19.75 per hour.

(2) *Duplication charges.* For photostatic reproduction of requested material which consists of sheets no larger than 8½ by 14 inches, the charge is 10 cents per page. For reproduction of other materials, the charge is the direct cost of photostat or other means necessarily used for duplication.

(3) *Review charges.* For initial review of documents in response to a commercial use request, the time spent reviewing them to determine whether they are exempt from mandatory disclosure is charged at the same rates as search time.

(4) *Charges for computer searches.* For computer searches, the charge is the direct cost of providing the service, including the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for responsive records, and operator/programmer salary apportionable to the search.

(5) *Other charges.* Where a response to a request requires services (including personnel) or materials other than the ones described in paragraphs (c)(1), (2), (3), and (4) of this section, the charge is the full cost of any such services and materials which TVA agrees to provide, but only if the requester has been notified of such cost before it is incurred, or if the request contains a statement accepting responsibility for the cost to be incurred. Such services or materials (provided at TVA's discretion) include:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

(d) *Waiver of fees and services provided without charge.* (1) TVA waives or reduces fees otherwise chargeable under this section if TVA determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(2) Except for documents provided in response to a commercial use request, the first 100 pages of duplication and the first 4 hours of search time will be provided without charge. Educational and noncommercial scientific institution requesters who seek records for scholarly or scientific research and representatives of the news media are not charged search time.

(3) No fee is charged to any requester if the cost of collecting the fee would be equal to or greater than the fee itself.

(e) *Assessment and collection of fees.* (1) Interest may be charged to those requesters who fail to pay fees charged. Interest may begin to be assessed on the amount billed on the 31st day following the day on which the billing was sent but any interest assessed will accrue from the date of the billing. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(2) If TVA reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, TVA may aggregate any such requests and charge accordingly.

(3) If TVA determines that the allowable charges a requester may be required to pay are likely to exceed $250, TVA may require a requester to make an advance payment of an amount up to the full estimated charges if the requester has no history of prompt payment. If the requester has such a history, TVA may notify the requester of the estimated charges and if a satisfactory assurance of full payment is obtained, will not require an advance payment under this provision. The ad-

ministrative time limits prescribed in § 1301.1(c) of this part will begin to run only after TVA has received any payment required to be made in advance under this provision.

(4) Where a requester has previously failed to pay a fee charged in a timely manner (within 30 days of the date of billing), TVA may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (e)(1) of this section and to make an advance payment of the full estimated charges before the agency begins to process a new request or a pending request from that requester. The administrative time limits prescribed in § 1301.1(c) of this part will begin to run only after TVA has received any payment required to be made in advance under this provision.

(5) TVA may assess charges for time spent searching, even if TVA fails to locate the records or if records located are determined to be exempt from disclosure.

[52 FR 17939, May 13, 1987]

Subpart B—Privacy Act

AUTHORITY: 16 U.S.C. 831-831dd, 5 U.S.C. 552a.

SOURCE: 40 FR 45313, Oct. 1, 1975, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

§ 1301.11 Purpose and scope.

(a) The regulations in §§ 1301.11 to 1301.24 implement section 3 of the Privacy Act of 1974, 5 U.S.C. 552a, with respect to systems of records maintained by TVA. They provide procedures by which an individual may exercise the rights granted by the Act to determine whether a TVA system contains a record pertaining to him; to gain access to such records; to have a copy made of all or any portion thereof; and to request administrative correction or amendment of such records. They prescribe fees to be charged for copying records; establish identification requirements; list penalties provided by statute for certain violations of the Act; and establish exemptions from certain requirements of the Act for certain TVA systems or components thereof.

(b) Nothing in §§ 1301.11 to 1301.24 entitles an individual to any access to any information or record compiled in reasonable anticipation of a civil action or proceeding.

(c) Certain records of which TVA may have physical possession are the official records of another government agency which exercises dominion and control over the records, their content, and access thereto. In such cases, TVA's maintenance of the records is subject to the direction of the other government agency. Except for a request for a determination of the existence of the record, when TVA receives requests related to these records, TVA will immediately refer the request to the controlling agency for all decisions regarding the request, and will notify the individual making the request of the referral.

§ 1301.12 Definitions

For purposes of §§ 1301.11 to 1301.24:

(a) The "Act" means section 3 of the Privacy Act of 1974, 5 U.S.C. 552a;

(b) The terms "individual," "maintain," "record," "system of records," "statistical record," and "routine use" have the meaning provided for by the Act;

(c) The term "TVA system" means a system of records maintained by TVA;

(d) The term "TVA system notice" means a notice of a TVA system published in the FEDERAL REGISTER pursuant to the Act. TVA has published TVA system notices about the following TVA systems:

Apprentice Training Record System—TVA.
Personnel Files—TVA.
Cooperative Training Program for Construction Craftsmen—TVA.
Demonstration Farm Records—TVA.
Discrimination Complaint Files—TVA.
Employee Accident Information System—TVA.
Employee Accounts Receivable—TVA.
Employee Alleged Misconduct Investigatory Files—TVA.
Medical Record System—TVA.
Employee Statement of Employment and Financial Interests—TVA.
Payroll Records—TVA.
Employee Travel Advance Records—TVA.
Employment Applicant Files—TVA.
Grievance Records—TVA.

Land Between The Lakes Hunter Records—TVA.
Land Between The Lakes Register of Law Violations—TVA.
Employee Supplementary Vacancy Announcement Records—TVA.
Consultant and Personal Service Contractor Records—TVA.
Nuclear Quality Assurance Personnel Records—TVA.
Questionnaire-Farms in Vicinity of Proposed Nuclear Power Plant—TVA.
Radiation Dosimetry Personnel Monitoring Records—TVA.
Reforestation, Erosion control, and Plantation Case History Records—TVA.
Retirement System Records—TVA.
Test Demonstration Farm Records—TVA.
Woodland Resource Analysis Program Input Data—TVA.
Electricity Use, Rate, and Service Study Records—TVA.
Land Between The Lakes Mailing Lists—TVA.
OIG Investigative Records—TVA.
Call Detail Records—TVA.
Office of Nuclear Power Call Detail Records—TVA.
Project/Tract Files—TVA.

(e) The term "appellant" means an individual who has filed an appeal pursuant to § 1301.19(a) from an initial determination refusing to amend a record on request of the individual;

(f) The term "reviewing official" means TVA's Vice President, Human Resources, or another TVA official designated by the Vice President in writing to decide an appeal pursuant to § 1301.19;

(g) The term "day," when used in computing a time period, excludes Saturdays, Sundays, and legal public holidays.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30252, Aug. 11, 1988]

§ 1301.13 Procedures for requests pertaining to individual records in a record system.

(a) An individual may, in accordance with this section (1) request a TVA determination whether a record retrieved by the individual's name or other personal identifier is maintained in a TVA system, and (2) request access to such a record. A request for determination may be combined with a request for access.

(b) Requests under this section shall:

(1) Be in writing and signed by the individual seeking the determination or access;

(2) Include the individual's mailing address;

(3) Name the TVA system as listed in the TVA system notice;

(4) Include any additional identifying information specified in the paragraph headed "Notification procedure" in the applicable TVA system notice;

(5) Specify whether the request is for determination only or for both determination and access; and

(6) Include such proof of identity as may be required by § 1301.14 and the applicable system notice.

Requests may be presented in person or by mail. In-person requests shall be presented during normal TVA business hours, as set out in § 1301.14(g).

(c) Requests for determination only shall be presented to the official designated in the paragraph headed "Notification procedure" in the TVA system notice for the TVA system concerned. Requests for both determination and access shall be presented to the official designated in the paragraph headed "Access procedure" in the TVA system notice for the TVA system concerned. Certain TVA system notices designate officials at field locations of TVA systems. With respect to such TVA systems, an individual who believes his record is located at the field location may present a request to the designated official at the field location. If the record is not available at that field location, the request will be forwarded to the appropriate TVA office.

(d) If a request is for determination only, the determination will normally be made within 10 days after receipt of the request. If the determination cannot be made within 10 days after receipt of a request, the designated official will acknowledge the request in writing and state when the determination will be made. Upon making a determination, the designated official will notify the individual making the request whether the record exists. The notice will include any additional information necessary to enable the in-

dividual to request access to the record.

(e) A request which includes a request for access will be acknowledged within 10 days after receipt. If access can be granted as requested, the acknowledgment will provide a time and place for disclosure of the requested record. Disclosure will normally be made within 30 days of the date of the acknowledgement, but the designated official may extend the 30-day period for reasons found by him to be good cause. In case of an extension, TVA will notify the individual, in writing, that disclosure will be delayed, the reasons for delay, and the anticipated date on which the individual may expect the record to be disclosed. TVA will attempt to accommodate reasonable requests for disclosure at specified times and dates, as set forth in a request for access, so far as compatible with the conduct of TVA business.

§ 1301.14 Times, places, and requirements for identification of individuals making requests.

(a) TVA will require proof of identity, in accordance with this section, before it will disclose a record under § 1301.15 of this part to an individual requesting access to the record, and before it will disclose the existence of a record to a requester under § 1301.13 of this part, if TVA determines that disclosure of the existence of such record would constitute an unwarranted invasion of personal privacy.

(b) Identification normally required would be an identification card such as a valid state driver's license or TVA or other employee identification card. A comparison of the signature of the requester with either the signature on the card or a signature in the record may be used to confirm identity.

(c) Because of the sensitivity of the subject matter in a TVA system, a TVA system notice may prescribe special identification requirements for the disclosure of the existence of or access to records in that TVA system. In such case, the special identification requirements prescribed in the TVA system notice shall apply in lieu of those prescribed by paragraph (b) of this section.

(d) If TVA deems it warranted by the nature of identification presented, the subject matter of the material to be disclosed, or other reasons found by TVA to be sufficient, TVA may require the individual requesting access to sign a statement asserting identity and stating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

(e) Where TVA is requested to provide access to records by mailing copies of records to the requester, the request shall contain or be accompanied by adequate identifying information to make it likely the requester is the person he purports to be and a notarized statement asserting identity and stating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

(f) Where sensitivity of record information may warrant (i.e., unauthorized access could cause harm or embarrassment to the individual) or disclosure by mail to third persons is requested, TVA may require in-person confirmation of identity. If in-person confirmation of identity is required, the individual may arrange with the designated TVA official to provide such identification at any of these TVA locations convenient to the individual: Knoxville, Nashville, and Chattanooga, Tennessee; Muscle Shoals, Alabama; Washington, D.C., or another location agreed upon by the individual and the designated TVA official. Upon request the TVA official will provide an address and an appropriate time for such identification to be presented.

(g) In general, TVA offices located in the eastern time zone are open 8 a.m. to 4:45 p.m., and those in the central time zone 7:30 a.m. to 4:15 p.m. Construction project offices and Land Between The Lakes are generally open 7 a.m. to 3:30 p.m. Offices are closed on Saturdays, Sundays, and the following holidays: New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independ-

ence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30253, Aug. 11, 1988]

§ 1301.15 Disclosure of requested information to individuals.

(a) All disclosure and examination of records shall normally be made in the presence of a TVA representative. If an individual wishes to be accompanied by a third person of the individual's choosing when the record is disclosed, TVA may require the individual to furnish TVA, in advance of disclosure of the record, a statement signed by the individual authorizing discussion and disclosure of the record in the preser ce of the accompanying person. If desired by the individual, TVA shall provide copies of any documents reviewed in the record which are requested at the time of review. Fees shall be charged for such copies in accordance with the fee schedule in § 1301.21, and shall be payable prior to delivery of the copies to the individual.

(b) Where permitted by § 1301.14, copies of an individual's record will be made available by mail. A charge for copies will be made in accordance with § 1301.21 of this part. All fees due shall be paid prior to mailing of the materials. However, if TVA is unable to allow in-person review of the record, the first copy will be made available without charge.

§ 1301.16 Special procedures—medical records.

If, in the judgment of TVA, the transmission of medical records, including psychological records, directly to a requesting individual could have an adverse effect upon such individual, TVA may refuse to disclose such information directly to the individual. TVA will, however, disclose this information to a licensed physician designated by the individual in writing.

§ 1301.17 Requests for correction or amendment of record.

(a) An individual may request amendment of records pertaining to him in a TVA system to the extent permitted by the Act in accordance with this section. A request for amendment shall:

(1) Be in writing and signed by the individual seeking the amendment;

(2) Name the TVA system in which the record is maintained;

(3) Describe the item or items of information to be amended;

(4) Describe the nature of the amendment requested; and

(5) Give the reasons for the requested change.

(b) Requests shall be made to the official designated in the paragraph headed "Contesting record procedures" in the TVA system notice for the TVA system concerned. Before considering a request, TVA may require proof of identity of the requester similar to that required under § 1301.14 to gain access to the record.

(c) The individual requesting amendment has the responsibility of providing TVA with evidence of why his record should be amended, and must provide adequate evidence to TVA to justify his request.

(d) The provisions of §§ 1301.11 to 1301.24 of this part do not permit the alteration of evidence presented or to be presented in the course of judicial or administrative proceedings; neither do they permit collateral attack on a prior judicial or administrative action, or provide a collateral remedy for a matter otherwise judicially or administratively cognizable.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30253, Aug. 11, 1988]

§ 1301.18 TVA review of request for correction or amendment of record.

(a) TVA will acknowledge a request for amendment within 10 days of receipt. The acknowledgement will be in writing, will request any additional information TVA requires to determine whether to make the requested correction or amendment, and will indicate the date by which TVA expects to make its initial determination.

(b) TVA will, except in unusual circumstances, complete its consideration of requests to amend records within 30 days. If more time is deemed necessary, TVA will notify the individual of

the delay and of the expected date of completion of the review.

(c) If TVA determines that a record should be corrected or amended, in whole or in part, in accordance with a request, it will advise the requesting individual in writing of its determination, and correct or amend the record accordingly. If an accounting of disclosures has been made, TVA will, to the extent of the accounting, inform prior recipients of the record of the fact that the correction was made and the substance of the correction.

(d) If TVA, after initial consideration of a request, determines that a record should not be corrected or amended, in whole or in part, in accordance with a request, it will notify the individual in writing of its refusal to amend the record and the reasons therefor. The notification will inform the individual that the refusal may be appealed administratively and will advise the individual of the procedures for such appeals.

§ 1301.19 Appeals on initial adverse agency determination on correction or amendment.

(a) An individual may appeal an initial determination refusing to amend that individual's record in accordance with this section. An appeal must be taken within 20 days of receipt of notice of TVA's initial refusal to amend the record and is taken by delivering a written notice of appeal to the Vice President, Human Resources, Tennessee Valley Authority, Knoxville, Tennessee 37902. Such notice shall be signed by the appellant and shall state:

(1) That it is an appeal from a denial of a request to amend the individual's records under these regulations and under the Privacy Act of 1974;

(2) The reasons why the appellant believes the denial to have been erroneous;

(3) The date on which the denial was issued; and

(4) The date on which the denial was received by the appellant.

(b) Appeals shall be determined by a reviewing official. Such determination may be based on information provided for the initial determination; any additional information which TVA or the appellant may desire to provide; and any other material the reviewing official deems relevant to the determination. The reviewing official, in his sole discretion, may request TVA or the appellant to provide additional information deemed relevant to the appeal. The appellant will be given an opportunity to respond to any information provided by TVA or independently procured by the reviewing official. If in the sole discretion of the reviewing official a hearing is deemed necessary for resolution of the appeal, the reviewing official may conduct a hearing upon notice to TVA and the appellant, at which both TVA and the appellant shall be afforded an opportunity to be heard on the appeal. The rules governing any hearing will be set forth in the notice of hearing.

(c) The reviewing official shall make final determination on the appeal within 30 days after it is received unless such period is extended for good cause. If the reviewing official finds good cause for an extension, TVA will inform the appellant in writing of the reason for the delay and of the approximate date on which the reviewing official expects to complete his determination of the appeal.

(d) If the reviewing official determines that a record should be amended in whole or in part in accordance with an appellant's request, TVA will inform the appellant in writing of its determination and correct or amend the record. If an accounting of disclosures has been made, TVA will, to the extent of the accounting, inform prior recipients of the record of the fact that the correction was made and of the substance of the correction.

(e) If the reviewing official determines not to amend a record, in whole or in part, in accordance with a request, TVA will advise the individual:

(1) Of its refusal to amend and the reasons therefor;

(2) Of the appellant's right to file a concise statement of reasons for disagreement with the refusal as set out in paragraph (f) of this section;

(3) Of the procedures for filing a statement of disagreement;

(4) That any statement of disagreement will be made available to anyone to whom the record is subsequently

disclosed together with any statement by TVA summarizing its reasons for refusing to amend the record;

(5) That prior recipients of the disputed record will be provided a copy of any statement of dispute to the extent that an accounting of disclosures was maintained; and

(6) Of his or her right to seek judicial review of the agency's refusal to amend a record.

(f) If the reviewing official's final determination of an appeal is a refusal to correct or amend a record, in whole or in part, in accordance with the request, the appellant may file with TVA a concise statement setting forth the reasons for his or her disagreement with the refusal of TVA to amend the records. Such statements normally should not exceed 100 words. A statement of disagreement should be submitted within 30 days of receipt of notice of the reviewing official's decision on the appeal, and should be sent to system manager. In any disclosure containing information about which the individual has filed a statement of disagreement which occurs after the filing of the statement, TVA will clearly note any portion of the record which is disputed and provide copies of the statement with the disclosure. Copies of the statement will also be furnished to persons or other agencies to whom the record has been disclosed to the extent that an accounting of disclosures was made. TVA may attach to the statement of disagreement a brief summary of TVA's reasons for refusing to amend the record. Such summaries will be disclosed to the individual, but are not subject to amendment.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30253, Aug. 11, 1988]

§ 1301.20 Disclosure of record to persons other than individual to whom it pertains.

For purposes of §§ 1301.11 to 1301.24, the parent of any minor or the legal guardian of any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction may act on behalf of the individual. TVA may require proof of the relationship prior to allowing such action. The parent or legal guardian may not act where the individual concerned objects to the action of the parent or legal guardian, unless a court otherwise orders.

§ 1301.21 Fees.

(a) Fees to be charged, if any, to any individual for making copies of his or her record exclude the cost of any search and review of the record. The following fees are applicable:

(1) For reproduction of material consisting of sheets no larger than 8½ by 14 inches, ten cents per page; and

(2) For reproduction of other materials, the direct cost of photostats or other means necessarily used for duplication.

§ 1301.22 Penalties.

Section 552a(i), Title 5, United States Code provides that:

(1) Criminal Penalties. Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

§ 1301.23 General exemptions.

(a) Individuals may not have access to records maintained by TVA but which were provided by another agency which has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, TVA will advise the individual of their existence and of the name and address of the

source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

(b) The TVA system "Land Between The Lakes Register of Law Violations—TVA" is exempted from subsections (c)(3), (4); (d); (e)(1), (2), (3), (4)(G), (4)(H), (4)(I), (5); (f); (g); and (h) of 5 U.S.C. 552a and corresponding sections of these rules pursuant to section (j)(2) of 5 U.S.C. 552a (section 3 of the Privacy Act). Application of these provisions of the Privacy Act to the criminal law enforcement records in this system might interfere with effective law enforcement at the Land Between The Lakes.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 53 FR 30253, Aug. 11, 1988]

§ 1301.24 Specific exemptions.

(a) The TVA system "Employee Alleged Misconduct Investigatory Files—TVA" is exempted from subsections (c)(3); (d); (e)(1), (4)(G), (4)(H), (4)(I); and (f) of 5 U.S.C. 552a and corresponding sections of these rules pursuant to section (k)(2) of 5 U.S.C. 552a (section 3 of the Privacy Act). This TVA system is exempted because applications of these provisions to this system might impair investigations of employee misconduct.

(b)(1) The TVA systems "Apprentice Training Record System—TVA," "Consultant and Personal Service Contractor Records—TVA," "Cooperative Training Program for Construction Craftsmen—TVA," "Employment Applicant Files—TVA," "Personnel Files—TVA," and "Nuclear Quality Assurance Personnel Records—TVA" are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. These TVA systems are exempted pursuant to section (k)(5) of 5 U.S.C. 552a (section 3 of the Privacy Act).

(2) Each of these TVA systems contain reference letters and information concerning employees and other individuals who perform services for TVA. TVA has received this information in the past under both express and implied promises of confidentiality and consistent with the Privacy Act these promises will be honored. Pledges of confidentiality will be necessary in the future to ensure that unqualified or unsuitable individuals are not selected for TVA positions. Without the ability to make these promises, a potential source of information may be unwilling to provide needed information, or may not be sufficiently frank to be of value in personnel screening.

(c)(1) The TVA systems "Apprentice Training Record System—TVA," "Consultant and Personal Service Contractor Records—TVA," "Cooperative Training Program for Construction Craftsmen—TVA," "Employment Applicant Files—TVA," and "Personnel Files—TVA," are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service would compromise the objectivity or fairness of the testing or examination process. These systems are exempted pursuant to section (k)(6) of 5 U.S.C. 552a (section 3 of the Privacy Act).

(2) This material is exempted because its disclosure would reveal information about the testing process which would potentially give an individual an unfair competitive advantage in selection based on test performance.

(d) The TVA system OIG Investigative Records is exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act) and corresponding sections of these rules pursuant to 5 U.S.C. 552a(k)(2). This system is exempted because application of these provisions might alert investigation subjects to the existence or scope of investigations, disclose investigative

39-060 O—89——6

techniques or procedures, reduce the cooperativeness of witnesses, or otherwise impair investigations.

[40 FR 45313, Oct. 1, 1975. Redesignated at 44 FR 30682, May 29, 1979, and amended at 52 FR 7408, Mar. 11, 1987; 53 FR 30253, Aug. 11, 1988]

Subpart C—Government in the Sunshine Act

AUTHORITY: 16 U.S.C. 831-831dd, 5 U.S.C. 552b.

SOURCE: 42 FR 14086, Mar. 15, 1977, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

§ 1301.41 Purpose and scope.

(a) The provisions of this subpart are intended to implement the requirements of section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552b, consistent with the purposes and provisions of the Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd.

(b) Nothing in this subpart expands or limits the present rights of any person under the Freedom of Information Act (5 U.S.C. 552) and the provisions of Subpart A of this part, except that the exemptions set forth in § 1301.46 shall govern in the case of any request made pursuant to the Freedom of Information Act and Subpart A to copy or inspect the transcripts, recordings, or minutes described in § 1301.47.

(c) Nothing in this subpart authorizes TVA to withhold from any individual any record, including transcripts, recordings, or minutes required by this subpart, which is otherwise accessible to such individual under the Privacy Act (5 U.S.C. 552a) and the provisions of Subpart B.

(d) The requirements of Chapter 33 of Title 44 of the United States Code shall not apply to the transcripts, recordings, and minutes described in § 1301.47.

§ 1301.42 Definitions.

For the purposes of this subpart:

(a) The term "Board" means the Board of Directors of the Tennessee Valley Authority;

(b) The term "meeting" means the deliberations of two or more members of the TVA Board where such deliberations determine or result in the joint conduct or disposition of official TVA business, but the term does not include deliberations required or permitted by § 1301.44 or § 1301.45;

(c) The term "member" means an individual who is a member of the TVA Board; and

(d) The term "TVA" means the Tennessee Valley Authority.

§ 1301.43 Open meetings.

Members shall not jointly conduct or dispose of TVA business other than in accordance with this subpart. Except as provided in § 1301.46, every portion of every meeting of the agency shall be open to public observation, and TVA shall provide suitable facilities therefor, but participation in the deliberations at such meetings shall be limited to members and certain TVA personnel. The public may make reasonable use of electronic or other devices or cameras to record deliberations or actions at meetings so long as such use is not disruptive of the meetings.

[42 FR 21470, Apr. 27, 1977. Redesignated at 44 FR 30682, May 29, 1979]

§ 1301.44 Notice of meetings.

(a) TVA shall make a public announcement of the time, place, and subject matter of each meeting, whether it is to be open or closed to the public, and the name and telephone number of a TVA official who can respond to requests for information about the meeting.

(b) Such public announcement shall be made at least one week before the meeting unless two or more members determine by a recorded vote that TVA business requires that such meeting be called at an earlier date. If an earlier date is so established, TVA shall make such public announcement at the earliest practicable time.

(c) Following a public announcement required by paragraph (a) of this section, the time or place of the meeting may be changed only if TVA publicly announces the change at the earliest practicable time. The subject matter of a meeting or the determination to open or close a meeting or portion of a

meeting to the public may be changed following the public announcement required by paragraph (a) of this section only if two or more members determine by a recorded vote that TVA business so requires and that no earlier announcement of the change was possible and if TVA publicly announces such change and the vote of each member upon such change at the earliest, practicable time.

(d) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the TVA official designated to respond to requests for information about the meeting shall be submitted for publication in the FEDERAL REGISTER.

§ 1301.45 Procedure for closing meetings.

(a) Action under § 1301.46 to close a meeting shall be taken only when two or more members vote to take such action. A separate vote shall be taken with respect to each meeting a portion or portions of which are proposed to be closed to the public pursuant to § 1301.46 or with respect to any information which is proposed to be withheld under § 1301.46. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series. The vote of each member participating in such vote shall be recorded and no proxies shall be allowed.

(b) Notwithstanding that the members may have already voted not to close a meeting, whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraphs (e), (f), or (g) of § 1301.46, the Board, upon request of any one of its members made prior to the commencement of such portion, shall vote by recorded vote whether to close such portion of the meeting.

(c) Within one day of any vote taken pursuant to this section, TVA shall make publicly available in accordance with § 1301.48 a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, TVA shall, within one day of the vote taken pursuant to this section, make publicly available in accordance with § 1301.48 a full written explanation of this action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(d) Prior to every meeting closed pursuant to § 1301.46, there shall be a certification by the General Counsel of TVA stating whether, in his or her opinion, the meeting may be closed to the public and each relevant exemptive provision. A copy of such certification shall be retained by TVA and shall be made publicly available in accordance with § 1301.48.

§ 1301.46 Criteria for closing meetings.

Except in a case where the Board finds that the public interest requires otherwise, the second sentence of § 1301.43 shall not apply to any portion of a meeting and such portion may be closed to the public, and the requirements of §§ 1301.44 and 1301.45(a), (b), and (c) shall not apply to any information pertaining to such meeting otherwise required by this subpart to be disclosed to the public, where the Board properly determines that such portion or portions of its meeting or the disclosure of such information is likely to:

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of an agency;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute (1) requires that the

matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would:

(1) In the case of any agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(2) In the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that this provision shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(j) Specifically concern an agency's issuance of a subpena, or its participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by an agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 1301.47 Transcripts of closed meetings.

(a) For every meeting closed pursuant to § 1301.46, the presiding officer of the meeting shall prepare a statement setting forth the time and place of the meeting, and the persons present, and such statement shall be retained by TVA.

(b) TVA shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (h), (i)(1), or (j) of § 1301.46, TVA shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) TVA shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at

least two years after such meeting, or until one year after the conclusion of any TVA proceeding with respect to which the meeting or portion was held, whichever occurs later.

§ 1301.48 Public availability of transcripts and other documents.

(a) Public announcements of meetings made pursuant to § 1301.44, written copies of votes to change the subject matter of meetings made pursuant to § 1301.44(c), written copies of votes to close meetings and explanations of such closings made pursuant to § 1301.45(c), and certifications of the General Counsel made pursuant to § 1301.45(d) shall be available for public inspection during regular business hours in the TVA Technical Library, room E2B7, 400 Commerce Avenue, Knoxville, Tennessee.

(b) TVA shall make promptly available to the public at the location described in paragraph (a) of this section the transcript, electronic recording, or minutes (as required by § 1301.47(b)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as TVA determines to contain information which may be withheld under § 1301.46. Each request for such material shall be made to the Director of Information, Tennessee Valley Authority, Knoxville, Tennessee 37902; state that it is a request for records pursuant to the Government in the Sunshine Act and this subpart; and reasonably describe the discussion or item of testimony, and the date of the meeting, with sufficient specificity to permit TVA to identify the item requested.

(c) In the event the person making a request under paragraph (b) of this section has reason to believe that all transcripts, electronic recordings, or minutes or portions thereof requested by that person and required to be made available under paragraph (b) of this section were not made available, the person shall make a written request to the Director of Information for such additional transcripts, electronic recordings, or minutes or portions thereof as that person believes should have been made available under paragraph (b) of this section and shall set forth in the request the reasons why such additional material is required to be made available with sufficient particularlity for the Director of Information to determine the validity of such request. Promptly after a request pursuant to this paragraph is received, the Director of Information or his designee shall make a determination as to whether to comply with the request, and shall immediately give written notice of the determination to the person making the request. If the determination is to deny the request, the notice to the person making the request shall include a statement of the reasons for the denial, a notice of the right of the person making the request to appeal the denial to TVA's General Manager, and the time limits therefor.

(d) If the determination pursuant to paragraph (c) of this section is to deny the request, the person making the request may appeal such denial to TVA's General Manager. Such an appeal must be taken within 30 days after the person's receipt of the determination by the Director of Information and is taken by delivering a written notice of appeal to the General Manager, Tennessee Valley Authority, Knoxville, Tennessee 37902. Such notice shall include a statement that it is an appeal from a denial of a request under § 1301.48(c) and the Government in the Sunshine Act and shall indicate the date on which the denial was issued and the date on which the denial was received by the person making the request. Promptly after such an appeal is received, TVA's General Manager or his designee shall make a final determination on the appeal. In making such a determination, TVA will consider whether or not to waive the provisions of any exemption contained in § 1301.46. TVA shall immediately give written notice of the final determination to the person making the request. If the final determination on the appeal is to deny the request, the notice to the person making the request shall include a statement of the reasons for the denial and a notice of the person's right to judicial review of the denial.

(e) Copies of materials available for public inspection under this section shall be furnished to any person at the actual cost of duplication or transcription.

PART 1302—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF TVA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

1302.1 Purpose.
1302.2 Application of this part.
1302.3 Definitions.
1302.4 Discrimination prohibited.
1302.5 Assurances required.
1302.6 Compliance information.
1302.7 Compliance reviews and conduct of investigations.
1302.8 Procedure for effecting compliance.
1302.9 Hearings.
1302.10 Decisions and notices.
1302.11 Judicial review.
1302.12 Effect on other regulations; supervision and coordination.

APPENDIX A—FEDERAL FINANCIAL ASSISTANCE TO WHICH THESE REGULATIONS APPLY

AUTHORITY: TVA Act, 48 Stat. 58 (1933) as amended, 16 U.S.C. 831-831dd, and sec. 602 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-1.

SOURCE: 30 FR 311, Jan. 9, 1965, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

§ 1302.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from TVA.

§ 1302.2 Application of this part.

This part applies to any program in which financial assistance is provided by TVA. The programs to which this part applies are listed in Appendix A of this part. Financial assistance, as used in this part, includes the grant or loan of money; the donation of real or personal property; the sale, lease, or license of real or personal property for a consideration which is nominal or reduced for the purpose of assisting the recipient; the waiver of charges which would normally be made, in order to assist the recipient; the entry into a contract where a purpose is to give financial assistance to the contracting party; and similar transactions. This part does not apply to:

(a) Any financial assistance by way of insurance or guaranty contracts,

(b) Money paid, property transferred, or other assistance extended under any such program before the effective date of this part,

(c) Any assistance to any individual who is the ultimate beneficiary under any such program, or

(d) Any employment practice, under any such program, of any employer, employment agency, or labor organization, unless such practice exists in a program where a primary objective of the TVA financial assistance is to provide employment; or where such practice subjects persons to discrimination in the provision of services and benefits on the grounds of race, color, or national origin in a program or activity receiving Federal financial assistance from TVA.

The fact that a program is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs may be added to this list by notice published in the FEDERAL REGISTER.

[30 FR 311, Jan. 9, 1965. Redesignated at 44 FR 30682, May 29, 1979, and amended at 49 FR 20481, May 15, 1984]

§ 1302.3 Definitions.

(a) "TVA" as used in these regulations, refers to the Tennessee Valley Authority, as created by the Tennessee Valley Authority Act of 1933, 48 Stat. 58, *as amended*, 16 U.S.C. 831-831dd. *See also* paragraph (e) of § 1302.6.

(b) "Recipient" refers to any person, group, or other entity which either receives financial assistance from TVA, or which has been denied such assistance.

(c) "Assistant Attorney General" refers to the Assistant Attorney Gen-

eral, Civil Rights Division, Department of Justice.

(d) "Title VI" refers to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*

[49 FR 20481, May 15, 1984; 49 FR 47383, Dec. 4, 1984]

§ 1302.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from TVA. For the purposes of this part, the following definitions of race and ethnic group apply:

(1) *Black, not of Hispanic origin.* A person having origins in any of the black racial groups of Africa;

(2) *Hispanic.* A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(3) *Asian or Pacific Islander.* A person having origin in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa;

(4) *American Indian or Alaskan Native.* A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition;

(5) *White, not of Hispanic origin.* A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Additional subcategories based on national origin or primary language spoken may be used where appropriate.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program or activity receiving Federal financial assistance from TVA may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any manner related to that individual's receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program has been satisfied.

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford that individual an opportunity to do so which is different from that afforded others under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under

any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section the services, financial aid, or other benefits provided under a program receiving financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of the financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6) This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies, the recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

[30 FR 311, Jan. 9, 1965, as amended at 38 FR 17944, July 5, 1973. Redesignated at 44 FR 30682, May 29, 1979. Redesignated and amended at 49 FR 20481, May 15, 1984]

§ 1302.5 Assurances required.

(a) TVA contributes financial assistance only under agreements which contain a provision which specifically requires compliance with this part in programs or activities receiving Federal financial assistance from TVA. If the financial assistance involves the furnishing of real property, the agreement shall obligate the recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property is used for a purpose for which the financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where the financial assistance involves the furnishing of personal property, the agreement shall obligate the recipient for the period during which the recipient retains ownership or possession of the property. In all other cases the agreement shall obligate the recipient for the period during which financial assistance is extended pursuant to the agreement. TVA shall specify the form of the foregoing agreements, and the extent to which an agreement shall be applicable to subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program.

(b) In the case of real property, structures or improvements thereon, or interests therein, which is acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer by TVA of real property or interest therein, the instrument effecting or recording the transfer of title shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained by transfer from TVA, the covenant against discrimination may also include a condition coupled with a right to be reserved by TVA to revert title to the property in the event of a breach of the covenant where, in the discretion of TVA, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise en-

cumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, TVA may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as it deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

[30 FR 311, Jan. 9, 1965, as amended at 38 FR 17944, July 5, 1973. Redesignated at 44 FR 30682, May 29, 1979. Redesignated and amended at 49 FR 20481, May 15, 1984]

§ 1302.6 Compliance information.

(a) *Cooperation and assistance.* TVA shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to TVA timely, complete and accurate compliance reports at such times, and in such form and containing such information, as TVA may determined to be necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by TVA during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives financial assistance, and make such information available to them in such manner as TVA finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

(Information collection requirements appearing in § 1302.6 were approved by the Office of Management and Budget under control number 3316-0077)

[30 FR 311, Jan. 9, 1965. Redesignated at 44 FR 30682, May 29, 1979. Redesignated at 49 FR 20481, May 15, 1984, and amended at 51 FR 9649, Mar. 20, 1986]

§ 1302.7 Compliance reviews and conduct of investigations.

(a) *Preaward compliance reviews.* (1) Prior to approval of financial assistance, TVA will make a determination as to whether the proposed recipient is in compliance with Title VI and the requirements of this part with respect to a program or activity for which it is seeking Federal financial assistance from TVA. The basis for such a determination shall be submission of an assurance of compliance and a review of the data and information submitted by the proposed recipient, any relevant compliance review reports on file with TVA, and any other information available to TVA. Where a determination cannot be made from this data, TVA will require the submission of necessary additional information and may take additional steps. Such additional steps may include, for example, communicating with local government officials, protected class organizations, and onsite reviews.

(2) No proposed recipient shall be approved unless it is determined that the proposed recipient is in compliance with Title VI and this part or has agreed in writing to take necessary specified steps within a stated period of time to come into compliance with Title VI and this part. Such an agreement must be approved by TVA and

made a part of the conditions of the agreement under which the financial assistance is provided.

(3)(i) Where TVA finds that a proposed recipient may not be in compliance with Title VI and this part, TVA shall notify the proposed recipient and the Assistant Attorney General for Civil Rights in writing of:

(A) The preliminary findings setting forth the alleged noncompliance;

(B) Suggested actions for correcting the alleged noncompliance; and

(C) The fact that the proposed recipient has 10 days to correct the alleged noncompliance or to provide during this time a written submission responding to or rebutting the preliminary findings or suggested corrective actions set forth in the notice.

(ii) If within this 10-day period the proposed recipient has not agreed to the suggested actions set forth or to other actions that would correct the alleged noncompliance under paragraph (a)(3)(i)(B) of this section, or the preliminary findings set forth in paragraph (a)(3)(i)(A) of this section have not been rebutted to TVA's satisfaction, or voluntary compliance has not been otherwise secured, TVA shall make a formal determination of compliance or noncompliance, notify the proposed recipient, and the Assistant Attorney General for Civil Rights and institute proceedings (including provision of an opportunity for a hearing) under § 1302.8 of this part.

(b) *Postaward compliance reviews.* (1) TVA may periodically conduct compliance reviews of selected recipients in their programs or activities receiving TVA financial assistance, including the request of data and information, and may conduct onsite reviews where it has reason to believe that discrimination may be occurring in such programs or activities.

(2) Selection for review shall be made on the basis of the following criteria among others:

(i) The number and nature of discrimination complaints filed against a recipient with TVA or other Federal agencies;

(ii) The scope of the problem revealed by an investigation commenced on the basis of a complaint filed with TVA against a recipient; and

(iii) The amount of assistance provided to the recipient.

(3) Within 15 days after selection of a recipient for review, TVA shall inform the recipient that it has been selected for review. The review will ordinarily be initiated by a letter requesting data pertinent to the review and advising the recipient of:

(i) The practices to be reviewed;

(ii) The program or activities affected by the review;

(iii) The opportunity to make, at any time prior to receipt of the final TVA findings with respect to the review pursuant to paragraph (b)(6) of this section, a documentary submission responding to TVA which explains, validates, or otherwise addresses the practices under review; and

(iv) The schedule under which the review will be conducted and a determination of compliance or noncompliance made.

(4) Within 180 days of initiation of a review, TVA shall advise the recipient in writing of:

(i) Its preliminary findings;

(ii) Where appropriate, recommendations for achieving voluntary compliance;

(iii) The opportunity to request TVA to engage in voluntary compliance negotiations prior to TVA's final determination of compliance or noncompliance. TVA shall notify the Assistant Attorney General at the time it notifies the recipient of any matter where recommendations for achieving voluntary compliance are made.

(5) TVA's General Manager may extend the 180-day period set out in paragraph (b)(4) of this section for good cause shown.

(6) If, within 50 days of the recipient's notification under paragraph (b)(4) of this section, TVA's recommendations for compliance are not met or voluntary compliance is not secured, and the preliminary findings have not been rebutted to TVA's satisfaction, TVA shall make a final determination of compliance or noncompliance. The determination is to be made no later than 14 days after the conclusion of the 50-day negotiation period. TVA's General Manager may extend the 14-day period for good cause shown.

(7) Where TVA makes a formal determination of noncompliance on a postaward review, the recipient and the Assistant Attorney General shall be immediately notified in writing of the determination and of the fact that the recipient has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been achieved within the 10 days, TVA shall institute proceedings under § 1302.8 of this part.

(8) All agreements to come into voluntary compliance shall be in writing and signed by TVA and an official who has authority to legally bind the recipient.

(c) *Complaint investigation.* (1) TVA shall investigate complaints of discrimination in a program or activity receiving Federal financial assistance from TVA that allege a violation of Title VI or this part.

(2) No complaint will be investigated if it is received by TVA more than 180 days after the date of the alleged discrimination unless the time for filing is extended by TVA for good cause shown. Where a complaint is accepted for investigation, TVA will initiate an investigation. The complainant shall be notified in writing as to whether the complaint has been accepted or rejected.

(3) TVA shall conduct investigations of complaints as follows:

(i) Within 10 days of receipt of a complaint, the Director of Equal Opportunity Compliance shall:

(A) Determine whether TVA has jurisdiction under paragraphs (c) (1) and (2) of this section;

(B) If jurisdiction is not found, wherever possible refer the complaint to the Federal agency with such jurisdiction and advise the complainant;

(C) If jurisdiction is found, notify the recipient alleged to be in violation of the receipt and acceptance of the complaint; and

(D) Initiate the investigation.

(ii) The investigation will ordinarily be initiated by a letter to the recipient requesting data pertinent to the complaint and informing the recipient of:

(A) The nature of the complaint, and with the written consent of the complainant, the identity of the complainant;

(B) The program or activities affected by the complaint;

(C) The opportunity to make, at any time prior to receipt of TVA's final findings under paragraph (c)(5) of this section, a documentary submission, responding to, rebutting, or denying the allegations made in the complaint; and

(D) The schedule under which the complaint will be investigated and a determination of compliance or noncompliance made.

(iii) Within 180 days of the initiation of a complaint investigation, TVA shall advise the recipient, in writing, of:

(A) Preliminary findings;

(B) Where appropriate, recommendations for achieving voluntary compliance; and

(C) The opportunity to request TVA to engage in voluntary compliance negotiations prior to TVA's final determination of compliance or noncompliance. TVA shall notify the Assistant Attorney General at the time the recipient is notified of any matter where recommendations for achieving voluntary compliance are made.

(4) If, within 50 days of the recipient's notification under paragraph (c) of this section, TVA's recommendations for compliance are not met, or voluntary compliance is not secured, and the preliminary findings have not been rebutted to TVA's satisfaction, TVA shall make a formal determination of compliance or noncompliance. The determination is to be made no later than 14 days after conclusion of a 50-day negotiation period. TVA's General Manager may extend the 14-day period for good cause shown.

(5) Where TVA makes a formal determination of noncompliance, the complainant, the recipient, and the Assistant Attorney General shall be immediately notified in writing of the determination and of the fact that the recipient has an additional 10 days in which to come into compliance. If voluntary compliance has not been achieved within the 10 days, TVA shall institute proceedings under § 1302.8 of this part. The complainant shall also be notified of any action taken including the closing of the complaint or the achievement of voluntary compliance. All agreements to

come into voluntary compliance shall be in writing and signed by TVA and an official who has authority to legally bind the recipient and shall be made available to the complainant on request.

(6) If the complainant or party other than TVA has filed suit in Federal or State court alleging the same discrimination as alleged in a complaint pending before TVA, and if during TVA's investigation the trial of that suit would be in progress, TVA will consult with the Assistant Attorney General and court records to determine the need to continue or suspend the investigation and will monitor the litigation through the court docket and contacts with the complainant. Upon receipt of notice that the court has made a finding of discrimination against a recipient that would constitute a violation of this part, TVA shall institute proceedings as specified in § 1302.8 of this part. All agreements to come into voluntary compliance shall be in writing and signed by TVA and an official who has authority to legally bind the recipient.

(7) The time limits listed in paragraphs (c) (3) through (5) of this section shall be appropriately adjusted where TVA requests another Federal agency to act on the complaint. TVA shall monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, TVA shall institute appropriate proceedings as required by this part.

(d) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of Title VI or this part, or because such individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this regulation, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(e) *Enforcement authority.* TVA's Director of Equal Opportunity Compliance, or a successor as designated by TVA's Board of Directors, will be responsible for all decisions about initiating compliance reviews and complaint investigations. TVA's General Manager, or a successor as designated by TVA's Board of Directors, shall be responsible for all decisions about initiating compliance actions under § 1302.8(a) of this part.

(Information collection requirements appearing in § 1302.7 were approved by the Office of Management and Budget under control number 3316-0077)

[49 FR 20481, May 15, 1984, as amended at 49 FR 47383, Dec. 4, 1984; 51 FR 9649, Mar. 20, 1986]

§ 1302.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this regulation may be effected by the suspension or termination of or refusal to grant or to continue financial assistance or by any other means authorized by law. Such other means may include, but are not limited to,

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act),

(2) Institution of appropriate proceedings by TVA to enforce the provisions of the agreement of financial assistance or of any deed or instrument relating thereto, and

(3) Any applicable proceeding under State or local law.

The Assistant Attorney General, Civil Rights Division, Department of Justice, will be notified of all findings of probable noncompliance at the same time the recipient or applicant is notified.

(b) *Noncompliance with § 1302.5.* If anyone requesting financial assistance declines to furnish the assurance required under § 1302.5 of this part, or

otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, financial assistance may be refused in accordance with the procedures of paragraph (c) of this section and for such purposes, the term "recipient" shall be deemed to include one which has been denied financial assistance. TVA shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that TVA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an agreement therefor entered into with TVA prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue financial assistance.* No order suspending, terminating or refusing to grant or continue financial assistance shall become effective until (1) TVA has advised the recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, or a failure by the recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the TVA Board pursuant to § 1302.9, and (4) the expiration of 30 days after the TVA Board has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue financial assistance shall be limited to the particular political entity, or part thereof, or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) TVA has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

[30 FR 311, Jan. 9, 1965, as amended at 38 FR 17945, July 5, 1973. Redesignated at 44 FR 30682, May 29, 1979. Redesignated and amended at 49 FR 20483, May 15, 1984; 49 FR 47384, Dec. 4, 1984]

§ 1302.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1302.7(b), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected recipient. This notice shall advise the recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the recipient may request of TVA that the matter be scheduled for hearing or (2) advise the recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. A recipient may waive a hearing and submit written information and argument for the record. The failure of a recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 1302.7(b) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the time and place fixed by TVA unless it determines that the convenience of the recipient requires that another place be selected. Hearings shall be held before

the TVA Board, or a member thereof, or, at the discretion of the Board, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the recipient and TVA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with the procedures contained in 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both TVA and the recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the TVA Board may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 1302.9.

[30 FR 311, Jan. 9, 1965, as amended at 38 FR 17945, July 5, 1973. Redesignated at 44 FR 30682, May 29, 1979, and 49 FR 20483, May 15, 1984]

§ 1302.10 Decisions and notices.

(a) *Decision by a member of the TVA Board or a hearing examiner.* A member of the TVA Board or a hearing examiner who holds the hearing shall either make an initial decision or certify the entire record, including the Board member's or examiner's recommended findings and proposed decision, to the TVA Board for a final decision. A copy of such initial decision or certification shall be mailed to the recipient. Where the initial decision is made by a member of the TVA Board or a hearing examiner, the recipient may file exceptions to the initial decision, together with a statement of reasons therefor. Such exceptions and statement shall be filed with the TVA Board within 30 days of the date the notice of initial decision was mailed to the recipient. In the absence of exceptions, the TVA Board may on its own motion within 45 days after the initial decision serve on the recipient a notice that the TVA Board will review the decision. Upon the filing of such exceptions or of such notice of review, the TVA Board shall review the initial decision and issue its own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review, the initial decision shall constitute the final decision of the TVA Board.

(b) *Decisions on record or review by the TVA Board.* Whenever a record is certified to the TVA Board for decision or it reviews the decision of a

member of the TVA Board or a hearing examiner pursuant to paragraph (a) of this section, or whenever the TVA Board conducts the hearing, the recipient shall be given reasonable opportunity to file with the Board briefs or other written statements of its contentions, and a copy of the final decision of the Board shall be given in writing to the recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1302.8(a) a decision shall be made by the TVA Board on the record and a copy of such decision shall be given to the recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the recipient has failed to comply.

(e) *Approval by TVA Board.* Any final decision (other than a decision by the TVA Board) which provides for the suspension or termination of, or the refusal to grant or continue financial assistance, or the imposition of any other sanction available under this regulation or the Act, shall promptly be transmitted to the TVA Board, which may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no financial assistance will thereafter be extended under such program to the recipient determined by such decision to have failed to comply with this part, unless and until it corrects its noncompliance and satisfies TVA that it will fully comply with this part.

(g) *Posttermination proceedings.* (1) A recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any recipient or proposed recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request TVA to restore fully the recipient's eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the recipient has met the requirements of paragraph (g)(1) of this section. If TVA determines that those requirements have been satisfied, TVA shall restore such eligibility.

(3) If TVA denies any such request, the recipient may submit a written request for a hearing specifying why it believes TVA to have been in error. The recipient shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by TVA. The recipient will be restored to such eligibility if the recipient proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[30 FR 311, Jan. 9, 1965. Redesignated at 44 FR 30682, May 29, 1979. Redesignated and amended at 45 FR 20483, May 15, 1983]

§ 1302.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

[30 FR 311, Jan. 9, 1965. Redesignated at 44 FR 30682, May 29, 1979, and 49 FR 47384, Dec. 4, 1984]

§ 1302.12 Effect on other regulations; supervision and coordination.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by TVA which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to

which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue financial assistance to any recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof):

(1) Executive Order 12250 and regulations issued thereunder, or

(2) Any other regulations or instructions, insofar as they prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground.

(b) *Supervision and coordination.* TVA may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 1302.9), including the achievement of effective coordination and maximum uniformity within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by TVA.

[38 FR 17945, July 5, 1973. Redesignated at 44 FR 30682, May 29, 1979. Redesignated and amended at 49 FR 20484, May 15, 1984]

APPENDIX A—FEDERAL FINANCIAL ASSISTANCE TO WHICH THESE REGULATIONS APPLY

1. Transfers, leases and licenses of real property for nominal consideration to states, counties, municipalities, and other public agencies for development for public recreation.

2. Furnishing funds, property and services to state agencies, local governments and citizen organizations to advance economic growth in watersheds of Tennessee River tributaries through cooperative resource development programs.

3. Furnishing funds, property and services to land grant colleges for use in a cooperative program utilizing test-demonstration farms to test experimental fertilizers developed by TVA and to educate farmers and other interested persons concerning these new fertilizers. This program also includes the furnishing of fertilizers at reduced prices by TVA, through its fertilizer distributors, to such test-demonstration farms.

4. Furnishing space and utilities without charge under agreements with state agencies for use in accordance with the Vending Stands for Blind Act.

[30 FR 311, Jan. 9, 1965, as amended at 38 FR 17945, July 5, 1973. Redesignated at 44 FR 30682, May 29, 1979]

PART 1303—EQUAL EMPLOYMENT OPPORTUNITY—TVA CONTRACTS

Sec.

1303.1 Scope.
1303.2 General.
1303.3 Definitions.
1303.4 Basic requirements.
1303.4-1 Government contracts.
1303.4-2 Equal opportunity clause.
1303.4-3 Federally assisted construction contracts.
1303.4-4 Equal opportunity (applicant) clause.
1303.4-5 Subcontracts.
1303.4-6 Adaptation of language.
1303.4-7 Incorporation by reference.
1303.4-8 Incorporation by operation of the order and agency regulations.
1303.4-9 Notice to bidders regarding preaward equal opportunity compliance reviews.
1303.4-10 Elimination of segregated facilities.
1303.5 Exemptions.
1303.5-1 General.
1303.5-2 Specific contracts.
1303.5-3 Facilities not connected with contract.
1303.5-4 Effect of exemption.

Sec.
1303.5-5 Withdrawal of exemption.
1303.6 Administration.
1303.6-1 Duties.
1303.6-2 Educational responsibility.
1303.6-3 Notices to be posted.
1303.6-4 Reports and other required information.
1303.6-5 Compliance reviews.
1303.6-6 Complaints.
1303.6-7 Processing of matters.
1303.6-8 Assumption of jurisdiction by or referrals to the Director.
1303.6-9 Sanctions and penalties.
1303.6-10 Disputed matters related to the equal opportunity program.
1303.6-11 Preaward notices.
1303.8 Hearings.
1303.8-1 General.
1303.8-2 Informal hearings.
1303.8-3 Formal hearings.
1303.9 Reinstatement of ineligible contractors or subcontractors.
1303.10 Intimidation and interference.
1303.11 Affirmative action compliance programs.
1303.12 Access to records of employment.
1303.13 Rulings and interpretations.
1303.14 Solicitations or advertisements for employees.
1303.15 Existing contracts and subcontracts.

AUTHORITY: Tennessee Valley Authority Act of 1933, 48 Stat. 58, as amended, 16 U.S.C. secs. 831-831dd (1964; Supp. III, 1965-67) and 41 CFR 60-1.6(c).

SOURCE: 34 FR 2552, Feb. 25, 1969, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

§ 1303.1 Scope.

The regulations in this part set forth policies and procedures for carrying out the requirements of Executive Order No. 11246 of September 24, 1965 (30 FR 12319), Executive Order No. 11375 of October 13, 1967 (32 FR 141303), and the rules and regulations of the Secretary of Labor (33 FR 7804).

§ 1303.2 General.

On May 21, 1968, the Secretary of Labor issued regulations to achieve the aims of Parts II, III, and IV of Executive Order 11246 for the promotion and insuring of equal opportunity for all persons, without regard to race, creed, color, or national origin, employed or seeking employment with Government contractors or with contracts performing under federally assisted construction contracts. Effective October 14, 1968, the term "race, color, religion, sex, or national origin" was substituted for the term "race, creed, color, or national origin," as provided by Executive Order No. 11375. TVA applies the above regulations with respect to all contracts administered by it which are within the scope of the Secretary's regulations. This Part 1303 is issued by TVA to implement and supplement the Secretary's regulations.

§ 1303.3 Definitions.

As used in this part, the following terms have the meanings stated.

(a) "Administering agency" means any department, agency, and establishment in the executive branch of the Government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts.

(b) "Agency" means any contracting or any administering agency of the Government.

(c) "Applicant" means an applicant for Federal assistance involving a construction contract or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.

(d) "Compliance agency" means the agency designated by the Director on a geographical, industry, or other basis to conduct compliance reviews and to undertake such other responsibilities in connection with the administration of the order as the Director may determine to be appropriate. In the absence of such a designation, the compliance agency will be determined as follows:

(1) In the case of a prime contractor not involved in construction work, the compliance agency will be the agency whose contracts with the prime contractor have the largest aggregate dollar value;

(2) In the case of a subcontractor not involved in construction work, the compliance agency will be the compliance agency of the prime contractor with which the subcontractor has the

largest aggregate value of the subcontracts or purchase orders for the performance of work under contracts;

(3) In the case of a prime contractor or subcontractor involved in construction work, the compliance agency for each construction project will be the agency providing the largest dollar value for the construction project; and

(4) In the case of a contractor who is both a prime contractor and subcontractor, the compliance agency will be determined as if such contractor is a prime contractor only.

(e) "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

(f) "Contract" means any Government contract or any federally assisted construction contract.

(g) "Contracting agency" means any department, agency, establishment, or instrumentality in the executive branch of the Government, including any wholly owned Government corporation, which enters into contracts.

(h) "Contractor" means, unless otherwise indicated, a prime contractor or subcontractor.

(i) "Director" means the Director, Office of Federal Contract Compliance, U.S. Department of Labor, or any person to whom he delegates authority under the regulations in this part.

(j) "Equal opportunity clause" means the contract provisions set forth in § 1303.4–2 or § 1303.4–4 as appropriate.

(k) "Federally assisted construction contract" means any agreement, or modification thereof, between any applicant and a person for construction work which is paid for, in whole or in part, with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(l) "Government" means the Government of the United States of America.

(m) "Government contract" means any agreement, or modification thereof, between any contracting agency and any person for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. The term "services," as used in this paragraph (m) includes, but is not limited to, the following services: Utility, construction, transportation, research, insurance, and fund depositary. The term "Government contract" does not include (1) agreements in which the parties stand in the relationship of employer and employee, (2) federally assisted construction contracts, and (3) contracts for the sale or real and personal property by the Government.

(n) "Hearing officer" means the individual or board of individuals designated to conduct hearings.

(o) "Modification" means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

(p) "Order" means Parts II, III, and IV of Executive Order No. 11246 of September 24, 1965 (30 FR 12319), any Executive order amending such order, and any other Executive order superseding such order.

(q) "Person" means any natural person, corporation, partnership, unincorporated association, state or local government, and any agency, instrumentality, or subdivision of such a government.

(r) "Prime contractor" means any person holding a contract and, for the purposes of §§ 1303.6–5 through 1303.6–11 and § 1303.8, any person who has held a contract subject to the order.

(s) "Recruiting and training agency" means any person who refers workers to any contractor, or subcontractor, or who provides or supervises apprentice-

ship or training for employment by any contractor or subcontractor.

(t) "Rules, regulations, and relevant orders of the Secretary of Labor," as used in the Equal Opportunity clause means rules, regulations, and relevant orders of the Secretary of Labor, or his designee, issued pursuant to the order.

(u) "Secretary" means the Secretary of Labor, U.S. Department of Labor.

(v) "Site of construction" means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair, and any temporary location or facility at which a contractor, subcontractor, or other participating party meets a demand or performs a function relating to the contract or subcontract.

(w) "Subcontract" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(x) "Subcontractor" means any person holding a subcontract and, for the purposes of §§ 1303.6–5 through 1303.6–11 and § 1303.8 any person who has held a subcontract subject to the order. The term "first-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor.

(y) "United States" as used herein shall include the States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, and the possessions of the United States.

§ 1303.4 Basic requirements.

§ 1303.4–1 Government contracts.

Except as otherwise provided, TVA includes the equal opportunity clause prescribed in § 1303.4–2 in each of its Government contracts (including modifications thereof).

§ 1303.4–2 Equal opportunity clause.

Equal opportunity. (The following clause is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR Part 60).)

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this equal opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this equal opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the equal opportunity

clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

§ 1303.4–3 Federally assisted construction contracts.

Except as otherwise provided, TVA requires the inclusion of the equal opportunity (applicant) clause prescribed in § 1303.4–4 as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity (federally assisted construction) clause contained therein.

§ 1303.4–4 Equal opportunity (applicant) clause.

Equal opportunity (applicant). (a) The applicant hereby agrees to incorporate, or cause to be incorporated, into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is paid for, in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity (federally assisted construction) clause:

Equal opportunity (federally assisted construction). During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this equal opportunity (federally assisted construction) clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the equal opportunity (federally assisted construction) clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts

in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by Law.

(7) The Contractor will include this equal opportunity (federally assisted construction) clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) The applicant further agrees that it will be bound by the above equal opportunity (federally assisted construction) clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided, however,* That if the applicant so participating is a State or local government, the above equal opportunity (federally assisted construction) clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

(c) The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the equal opportunity (federally assisted construction) clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

(d) The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity (federally assisted construction) clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings the administering agency may take any or all of the following actions: Cancel, terminate, or suspend, in whole or in part, this grant [contract, loan, insurance, guarantee]; refrain from extending any further assistance to the applicant under the program with respect to which its failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

§ 1303.4–5 Subcontracts.

(a) Each nonexempt prime contractor and subcontractor under a Government contract shall include the equal opportunity clause prescribed in § 1303.4–2 in each of their nonexempt subcontracts.

(b) Each nonexempt prime contractor and subcontractor under a federally assisted construction contract shall include in each of their nonexempt subcontracts the equal opportunity (federally assisted construction) clause contained in the equal opportunity (applicant) clause prescribed in § 1303.4–4.

§ 1303.4–6 Adaptation of language.

Such necessary changes in language may be made in the equal opportunity clause (see §§ 1303.4–2 and 1303.4–4) as shall be appropriate to identify properly the parties and their undertakings.

§ 1303.4–7 Incorporation by reference.

The equal opportunity clause may be incorporated by reference in Government bills of lading, transportation requests, contracts for deposit of Government funds, contracts for issuing and paying U.S. savings bonds and notes, contracts and subcontracts less than $50,000, and such other contracts as the Director may designate.

§ 1303.4–8 Incorporation by operation of the order and agency regulations.

By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and sub-

contract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts. The clause may also be applied to every nonexempt contract where there is no written contract between TVA and the contractor.

§ 1303.4–9 Notice to bidders regarding preaward equal opportunity compliance reviews.

The following notice (see § 1303.6–5(d)) shall be included in the invitation for bids for each formally advertised supply contract which may result in an award of $1 million or more:

Preaward equal opportunity compliance reviews. Before award of a contract of $1 million or more under this invitation to bid, the prospective contractor and each of his known first-tier subcontractors who will receive a subcontract of $1 million or more will be subject to a review to determine compliance with the equal opportunity clause and the regulations issued pursuant to Executive Order 11246. In order to qualify in this respect for award, the contractor and such subcontractors must be found, on the basis of such review, to be able to comply with these requirements.

Where a previous compliance review has been made within 6 months of the expected date of award, an additional full review will ordinarily not be needed to determine compliance.

If your bid is $1 million or more, supply the following data for each of your establishments (and subcontractor establishments if subcontract is $1 million or more) where work on the contract will be performed: Name and location of establishment; latest compliance review, date, and agency which made the review.

The following notice shall be included in the invitation for bids for each formally advertised construction or installation contract which may result in an award of $1 million or more:

Equal opportunity preaward conference. Where the bid of the apparent low responsible bidder is in the amount of $1 million or more, the bidder will be subject to a preaward conference with TVA for the purpose of determining whether the bidder and his subcontractors are able to comply with the provisions of the equal opportunity clause and carry out an affirmative action program of equal opportunity.

§ 1303.4–10 Elimination of segregated facilities.

(a) Prime contractors, subcontractors, and applicants subject to the Equal Opportunity clause must ensure that the facilities provided for employees are provided in a manner that segregation on the basis of race, color, religion, or national origin cannot result. They may neither require such segregated use by explicit directives nor tolerate such use by employee custom. The obligation extends further to ensuring that employees are not assigned to perform their services at any location under the prime contractor's, subcontractor's, or applicant's (where he is himself performing federally assisted construction) control where the facilities are segregated. Such segregation at any facility provided by a prime contractor, subcontractor, or applicant is an unacceptable failure to comply with the contractor's equal opportunity obligations. Discharge of this obligation in no way whatsoever diminishes or relieves a prime contractor, subcontractor, or applicant of his responsibility to carry out fully the other nondiscrimination and affirmative action requirements of his contract.

(b) TVA provides for the giving of the notice prescribed by this paragraph (b) to, and for its inclusion in agreements with applicants which may involve federally assisted construction contracts and related subcontracts exceeding $10,000 which are not exempt from the provisions of the equal opportunity clause. The notice to be included in agreements with applicants is as follows:

NOTICE TO APPLICANTS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

(a) A certification of nonsegregated facilities must be submitted by the applicant prior to any agreement for Federal financial assistance where the applicant will himself perform a federally assisted construction contract exceeding $10,000 which is not exempt from the provisions of the equal opportunity clause.

(b) Applicants for Federal Assistance shall notify prospective federally assisted construction contractors of the certification of nonsegregated facilities required, as follows:

NOTICE TO PROSPECTIVE FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS

(a) A certification of nonsegregated facilities must be submitted prior to the award of a federally assisted construction contract exceeding $10,000 which is not exempt from the provisions of the equal opportunity clause.

(b) Contractors receiving federally assisted construction contract awards exceeding $10,000 which are not exempt from the provisions of the equal opportunity clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed $10,000 and are not exempt from the provisions of the equal opportunity clause.

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

(a) A certification of nonsegregated facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the equal opportunity clause.

(b) Contractors receiving subcontract awards exceeding $10,000 which are not exempt from the provisions of the equal opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed $10,000 and are not exempt from the provisions of the equal opportunity clause.

(c) TVA includes a requirement for a certification of nonsegregated facilities in its (1) invitation for bids, (2) requests for proposals, (3) modifications of contracts (in the absence of a certification), (4) contracts resulting from unsolicited proposals, (5) federally assisted construction contracts of applicants, and (6) agreements with applicants. Pursuant to this requirement bidders, offerors, recipients of contract awards and contract modifications, applicants performing federally assisted construction contracts, federally assisted construction contractors, and their respective subcontractors, shall submit the certification prescribed by this paragraph (c) in connection with their bids, proposals, contracts, contract modifications, and agreements where awards and agreements may result in contracts and subcontracts exceeding $10,000 which are not exempt from the provisions of the equal opportunity clause. Certifications shall be individually signed except where the certification is executed by reason of the signature on the bid or offer. The certifications submitted by subcontractors shall be retained in the files of the prime contractor or subcontractor receiving the certification. Where a prime contractor or subcontractor does business with a concern on a continuing basis, a single certification may be submitted periodically (quarterly, semiannually, or annually) rather than with each transaction.

(1) Certification to be submitted by (i) bidders, (ii) offerors, (iii) contractors, (iv) subcontractors, and (v) applicants who are themselves performing federally assisted construction contracts:

Certification of nonsegregated facilities. By the submission of his bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise.

He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the equal opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where

the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A certification of nonsegregated facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the equal opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(2) Certification to be submitted by federally assisted construction contractors or applicants and their subcontractors:

Certification of nonsegregated facilities. (Applicable to federally assisted construction contracts and related subcontracts exceeding $10,000 which are not exempt from the equal opportunity clause.)

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the equal opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms, and washrooms, restaurants, and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the equal opportunity clause, and that he will retain such certifications in his files.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(d) The failure of a prime contractor or subcontractor to comply with the terms of his certification of nonsegregated facilities or with the terms of the equal opportunity clause as construed by paragraph (a) of this section shall be a ground for termination or cancellation of contracts or subcontracts as provided in § 1303.6–9.

§ 1303.5 Exemptions.

§ 1303.5–1 General.

Contracts and subcontracts are exempt from the requiremnts of the equal opportunity clause as provided in this section.

(a) *Transactions of $10,00 or under.* Contracts and subcontracs not exceeding $10,000, other than Government bills of lading, are exempt. In determining the applicability of this exemption to any federally asisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rathe than the amount of the Federal finacial assistance shall govern. No contractor, or subcontractor shall procure supplies or services in less than usal quantities to avoid applicability of the equal opportunity clause.

(b) *Contracts and subcatracts for indefinite quantities.* Contracts and subcontracts for indefinite quantities (including, but not limited to, open-end contract, requirement type contracts, Federal Supply Seeduie contracts, call-type contracts and purchase notice agreements) sall include the equal opportunity clase unless the purchaser has reasonto believe that the amount to be ordred in any year under such contras will not exceed $10,000. The appicability of the equal opportunity clase shall be determined by the purchser at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithanding the above, the equal opportuity clause shall be applied to an contract

whenever the amount of a single order exceeds $10,000. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(c) *Work outside the United States.* Contracts and subcontracts are exempt from the requirements of the equal opportunity clause with regard to work performed outside the United States by employees who were not recruited within the United States.

(d) *Contracts with State or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality, or subdivision thereof) shall not be applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract or subcontract. In addition, State and local governments are exempt from the requirements of filing the annual compliance report provided for by § 1303.6-4 and maintaining a written affirmative action compliance program prescribed by § 1303.11.

(e) *National security.* Any requirement set forth in the regulations in this part shall not apply to any contract or subcontract whenever the TVA Board determines that such contract or subcontract is essential to the national security and that its award without complying with such requirement is necessary to the national security. Upon making such a determination, the TVA Board notifies the Director in writing within 30 days.

(f) *Sales contracts.* Contracts providing for the sale of Government real and personal property are exempt from the requirements of the equal opportunity clause by reason of the definition of the term "Government contract" (see § 1303.3(m)).

§ 1303.5-2 Specific contracts.

The Director may exempt any agency or any person from requiring the inclusion of any or all of the equal opportunity clause in any specific contract, or subcontract, which he deems that special circumstances in the national interest so require. The Director may also exempt groups or categories of contracts or subcontracts of the same type where he finds it impracticable to act upon each request individually or where group exemptions will contribute to convenience in the administration of the order.

§ 1303.5-3 Facilities not connected with contract.

The Director may exempt from the requirements of the equal opportunity clause any of a prime contractor's or subcontractor's facilities which he finds to be in all respects separate and distinct from the activities of the prime contractor, or subcontractor, related to the performance of the contract, or subcontract, provided that he also finds that such an exemption will not interfere with or impede the effectuation of the order.

§ 1303.5-4 Effect of exemption.

Notwithstanding the inclusion in any contract or subcontract of the equal opportunity clause, the contractor or subcontractor shall be exempt from compliance therewith if the contract or subcontract containing such a clause is exempt.

§ 1303.5-5 Withdrawal of exemption.

When any contract or subcontract is of a class exempted under § 1303.5, the Director may withdraw the exemption for a specific contract, or subcontract, or group of contracts or subcontracts when in his judgment such action is necessary or appropriate to achieve the purposes of the order. Such withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal except that in procurements entered into by formal advertising or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of bids.

§ 1303.6 Administration.

§ 1303.6-1 Duties.

(a) *General responsibility.* TVA is primarily responsible for obtaining

compliance with the equal opportunity clause, the order, the regulations of the Secretary of Labor, and orders issued pursuant thereto. TVA cooperates with the Director and furnishes him such information and assistance as he may require in the performance of his functions under the order. Such information shall include compliance review reports, schedules of compliance reviews, and any other information relevant to the administration of the order.

(b) *TVA programs.* The Director of the Division of Purchasing is designated as TVA's Contract Compliance Officer. He administers the equal opportunity clause in TVA contracts and is TVA's liaison with Department of Labor's Office of Federal Contract Compliance and with other agencies in equal opportunity compliance matters. He may designate such Deputy Contract Compliance Officers as he deems necessary to assist him in the performance of his duties. The names, addresses, and telephone numbers of TVA's Contract Compliance Officer and Deputy Contract Compliance Officers are furnished to the Director.

(c) *TVA regulations.* TVA's regulations are submitted to the Director for review and approval prior to issuance and may be enforced upon approval of the Director, or 60 days after submission if not disapproved by the Director.

(d) *Award of contracts.* Sixty days after the effective date (July 1, 1968) of the rules, regulations, and relevant orders of the Secretary of Labor, TVA shall follow the procedures described in this paragraph (d) before the award of any nonexempt contract exceeding $100,000.

(1) All contracting officers and officers approving applications for Federal financial assistance involving a construction contract shall notify the Contract Compliance Officer or appropriate Deputy or Assistant as soon as practicable of the impending award of each nonexempt contract exceeding $100,000, the name and address of the prime contractor, anticipated time of performance, name and address of each known nonexempt subcontractor, whether the prime contractor and known nonexempt subcontractors have previously held any Government contracts or federally assisted construction contracts subject to Executive Orders Nos. 10925, 11114, or 11246, and whether the prime contractor has previously filed compliance reports required by Executive Orders Nos. 10925, 11114, or 11246, or by regulations of the Equal Employment Opportunity Commission issued pursuant to Title VII of the Civil Rights Act of 1964.

(2) The Contract Compliance Officer or appropriate Deputy or Assistant shall review the available information relative to the prospective prime contractor's equal opportunity compliance status and notify the contracting officer or approving officer of equal opportunity clearance or of any deficiencies found to exist. A copy of any written report shall be forwarded to the Director.

(3) Contracting officers or approving officers shall: (i) Notify the bidder, offeror, or applicant of any deficiencies found to exist by the Contract Compliance Officer (or appropriate Deputy or Assistant), and (ii) direct any bidder, offeror, or applicant so notified to negotiate with the Contract Compliance Officer (or appropriate Deputy or Assistant), and to take such actions as he may require.

(4) The award of any such contract shall be conditioned upon the Contract Compliance Officer's (or appropriate Deputy's or Assistant's) notification to the contracting officer or approving officer that the bidder, offeror, or applicant has taken action or has agreed to take action satisfactory to the Contract Compliance Officer (or appropriate Deputy or Assistant) or the TVA Board as provided in the regulations in this part. Any such agreement to take action shall be stated in the contract, if the Contract Compliance Officer (or appropriate Deputy or Assistant) so requires.

§ 1303.6–2 Educational responsibility.

(a) Contracting officers and other personnel concerned with procurement are apprised of their responsibilities for obtaining compliance with the equal opportunity clause.

(b) TVA publicizes the equal opportunity policy to prospective bidders and contractors, and makes available to contractors information concerning their responsibilities under the clause.

§ 1303.6–3 Notices to be posted.

Unless alternative notices are prescribed by the Director, or by TVA with the approval of the Director, prime contractors and subcontractors shall post the notice entitled "Equal Employment Opportunity Is The Law," as provided by the notice posting requirements of the equal opportunity clause.

§ 1303.6–4 Reports and other required information.

(a) *Requirements for prime contractors and subcontractors.* (1) TVA requires each prime contractor and each prime contractor and subcontractor shall cause its subcontractors to file annually, on or before March 31, complete and accurate reports on Standard Form 100 (EEO-1) promulgated jointly by the Office of Federal Contract Compliance, the Equal Employment Opportunity Commission, and Plans for Progress, or on such form as may hereafter be promulgated in its place, if such prime contractor or subcontractor (i) is not exempt from the provisions of this section in accordance with § 1303.5; (ii) has 50 or more employees; (iii) is a prime contractor or first-tier subcontractor; and (iv) has a contract, subcontract, or purchase order amounting to $50,000, or more, or serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: *Provided,* That any subcontractor below the first tier which performs construction work at the site of construction shall be required to file such a report if it meets the requirements in paragraphs (a)(1)(i), (ii), and (iv) of this section.

(2) Each person required by paragraph (a)(1) of this section to submit reports shall file such a report with TVA within 30 days after the award to him of a contract or subcontract, unless such person has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually in accordance with paragraph (a)(1) of this section, or at such other intervals as TVA or the Director may require. TVA with the approval of the Director, may extend the time for filing any report.

(3) The Director, TVA or the applicant, on their own motions, may require a prime contractor to keep employment or other records and to furnish, in the form requested, within reasonable limits, such information as the Director, TVA, or the applicant deems necessary for the administration of the order.

(4) The failure to file timely, complete, and accurate reports, as required, constitutes noncompliance with the prime contractor's or subcontractor's obligations under the equal opportunity clause and is a ground for the imposition by TVA, the Director, an applicant, prime contractor or subcontractor, of any sanctions authorized by the order and the regulations in this part. Any such failure which TVA is unable to correct shall be reported in writing to the Director by TVA as soon as practicable after it occurs.

(b) *Requirements for bidders or prospective contractors.* (1) TVA requires each bidder or prospective prime contractor and proposed subcontractor, where appropriate, to state in the bid or at the outset of negotiations for the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed with the Joint Reporting Committee, the Director, an agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements. The statement shall be in the form of a representation by the bidder or offeror substantially as follows:

The bidder represents that he:

1. Has participated in a previous contract or subcontract subject to the equal opportunity clause in form TVA 9923 or the almost identical equal opportunity clauses previously required under Executive Orders 10925 and 11114. Yes ——— No ———

2. Has filed Employer Information Report EEO-1 (Standard Form 100) with the Joint

Reporting Committee within the past 12 months: Yes —— No ——

3. Has filed other equal oportunity compliance reports with Government contracting agencies as required by such agencies: Yes —— No ——

4. Will obtain representations indicating submission of required compliance reports, signed by each proposed subcontractor, before awarding each subcontract of $10,000 or more: Yes —— No ——

Where a bidder or offeror fails to execute the representation, the omission shall be considered a minor informality and the bidder or offeror shall be permitted to satisfy the requirement prior to award.

(2) In any case in which a bidder or prospective prime contractor or proposed subcontractor, which participated in a previous contract or subcontract subject to Executive Orders Nos. 10925, 11114, or 11246, has not filed a report due under the applicable filing requirements, no contract or subcontract shall be awarded, unless such contractor submits a report covering the delinquent period or such other period specified by TVA or the Director.

(3) A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information as TVA or the Director requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to award, or after the award, or both, to furnish such other information as TVA, the applicant, or the Director requests.

(c) *Use of reports.* Reports filed pursuant to § 1303.6–4 shall be used only in connection with the administration of the order, the Civil Rights Act of 1964, or in furtherance of the purposes of the order and said Act.

§ 1302.6–5 **Compliance reviews.**

(a) The purpose of a compliance review is to determine if the prime contractor or subcontractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated during employment without regard to race, color, religion, sex, or national origin. It consists of a comprehensive analysis and evaluation of each aspect of the aforementioned practices, policies, and conditions resulting therefrom. Where necessary, recommendations for appropriate sanctions shall be made.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion. Before the contractor can be found to be in compliance with the order, he must make a specific commitment, in writing, to correct any such deficiencies. The commitment must include the precise action to be taken and dates for completion. The time period allotted shall be no longer than the minimum period necessary to effect such changes. Upon approval of such commitment by the Contract Compliance Officer, appropriate Deputy or Assistant, or the TVA Board, the contractor may be considered in compliance, on condition that the commitments are faithfully kept. The contractor shall be notified that making such commitments does not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

(c) When TVA is the compliance agency it has the primary responsibility for the conduct of compliance reviews. TVA regularly conducts compliance reviews in accordance with the Director's guidelines, and also conducts compliance reviews in accordance with any special requests or instructions of the Director. Compliance reviews may also be conducted by the Director. Whenever possible compliance reviews are conducted by qualified specialists regularly involved in equal opportunity programs.

(d) Before the award of any formally advertised supply contract which may result in an award of $1 million or more, a preaward compliance review of the prospective contractor and its known first-tier subcontractors who will be awarded subcontracts of $1 million or more must be conducted by the compliance agency within 6 months prior to the award of the contract. Where a previous compliance review has been made within 6 months of the

expected date of award or where the contractor has been submitting adequate special compliance reports to TVA following a compliance review made more than 6 months before the expected date of award, an additional full compliance review usually will not be needed to determine eligibility. If an agency other than the awarding agency is the compliance agency, the awarding agency shall notify the compliance agency and request appropriate action and finding in accordance with this paragraph (d). Whenever possible compliance agencies provice awarding agencies with written reports of compliance reviews within 30 days following the requests. In order to qualify for the award of a contract, a contractor and such first-tier subcontractors must be found on the basis of such review to be able to comply with the equal opportunity clause or carry out an acceptable program for compliance as provided in paragraph (b) of § 1303.6–5 (see § 1303.4–9 regarding the notice required to be included in formally advertised supply contracts which may result in awards of $1 million or more).

(e) Before award of any formally advertised construction or installation contract which will amount to $1 million or more, a preaward conference is held with the prospective contractor to determine whether he and his known subcontractors are able to comply with the provisions of the equal opportunity clause and carry out an affirmative action program. OFCC's area coordinator is included in the conference if he is available. The contractor must submit an acceptable written affirmative action compliance program in order to be eligible for award.

§ 1303.6–6 Complaints.

(a) Any employee of any contractor or applicant for employment with such contractor may, by himself or by an authorized representative, file in writing a complaint of alleged discrimination in violation of the equal opportunity clause. Such complaint is to be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by TVA or the Director upon good cause shown.

(b) Complaints may be filed with TVA or with the Director. Those filed with the Director may be referred to TVA for processing, or they may be processed in accordance with § 1303.6–8.

(c) Complaints will be required to be signed by the complainants or their authorized representatives and to contain the following information:

(1) Name and address (including telephone number) of the complainant;

(2) Name and address of the contractor or subcontractor who committed the alleged act of discrimination;

(3) A description of the act or acts considered to be discriminatory; and

(4) Other pertinent information which will assist in the investigation and resolution of the complaint.

(d) Where a complaint contains incomplete information, TVA or the Director shall seek promptly the needed information from the complainant. In the event such information is not furnished to TVA or the Director within 60 days of the date of such request, the case may be closed.

§ 1303.6–7 Processing of matters.

(a) *Complaints.* Where complaints are filed with TVA, the Contract Compliance Officer shall transmit a copy of the complaint to the Director within 10 days after receipt.

(b) *Investigations.* When TVA is the compliance agency it institutes a prompt investigation of each complaint filed with it or referred to it, and is responsible for developing a complete case record. A complete case record consists of the following:

(1) Name and address of each person interviewed;

(2) A summary of his statement;

(3) Copies or summaries of pertinent documents; and

(4) A narrative summary of the evidence disclosed in the investigation as it relates to each violation revealed.

When a complaint is filed against a prime contractor or subcontractor who has contracts involving more than one agency, unless otherwise provided, the compliance agency shall conduct the

investigation and make such findings and determinations as shall be appropriate for the administration of the order.

(c) *Resolution of matters.* (1) If the investigation of a complaint by TVA pursuant to paragraph (b) of § 1303.6–7 shows no violation of the equal opportunity clause, TVA so informs the Director. The Director may review TVA's findings, and he may request further investigation by TVA or may undertake such investigation as he may deem appropriate.

(2) If any complaint investigation or compliance review indicates a violation of t' equal opportunity clause, the matt should be resolved by informal me: , whenever possible. Such informal means may include the holding of a compliance conference by TVA. Each prime contractor and subcontractor shall be advised that the resolution is subject to review by the Director and may be disapproved if he determines that such resolution is not sufficient to achieve compliance.

(3) Hearings shall be conducted in connection with the processing of matters in accordance with the provisions of § 1303.8.

(4) For reasonable cause shown, the Director or the TVA Board may reconsider or cause to be reconsidered any matter on his or its own motion or pursuant to a request.

(d) *Reports to the Director.* (1) Within 60 days from receipt of a complaint by TVA, or within such additional time as may be allowed by the Director for good cause shown, TVA processes the complaint and submits to the Director the case record and a summary report containing the following information:

(i) Name and address of the complainant;

(ii) Brief summary of findings, including a statement as to TVA's conclusions regarding the contractor's compliance or noncompliance with the requirements of the equal opportunity clause; and

(iii) A statement of the disposition of the case, including any corrective action taken and any sanctions or penalties imposed or, whenever appropriate, the recommended corrective action and sanctions or penalties.

(2) A written report of every preaward compliance review made by TVA required by the regulations in this part or otherwise required by the Director, including findings, shall be forwarded to the Director within 10 days after the award for a postaward review.

(3) A written report of every other compliance review or any other matter processed by TVA involving an apparent violation of the equal opportunity clause shall be submitted to the Director if TVA is unable to obtain correction of the matter. Such report shall contain a brief summary of the findings, including a statement of conclusions regarding the contractor's noncompliance with the requirements of the order, and a statement of the disposition of the case, including any corrective action taken or recommended and any sanctions or penalties imposed or recommended.

§ 1303.6–8 Assumption of jurisdiction by or referrals to the Director.

The Director may inquire into the status of any matter pending before TVA, including complaints and matters arising out of reports, reviews, and other investigations. Where he considers it necessary or appropriate to the achievement of the purposes of the order, he may assume jurisdiction over the matter and proceed as provided herein. Whenever the Director assumes jurisdiction over any matter, or TVA refers any matter, he may conduct, or have conducted, such investigations, hold such hearings, make such findings, issue such recommendations and directives, order such sanctions and penalties, and take such other action as may be necessary or appropriate to achieve the purposes of the order. The Director notifies TVA of any corrective action to be taken or any sanctions to be taken or any sanction to be imposed by TVA. TVA takes such action, and reports the results thereof to the Director within the time specified.

§ 1303.6–9 Sanctions and penalties.

(a) *General.* (1) In every case where any complaint investigation or compliance review indicates the existence of

a violation of the equal opportunity clause, the matter should be resolved by informal means, including conference, concilation, mediation, and persuasion, whenever possible. This will also include, where appropriate, establishing a program for future compliance approved by the TVA Board or its designee. Where the apparent violation is not resolved by informal means, TVA affords the contractor or subcontractor an opportunity for a hearing (see § 1303.8). If a prime contractor or subcontractor, without a hearing, has complied with the recommendations or orders of TVA or the Director and believes such orders or recommendations to be erroneous, he shall, upon filing a request therefor within 10 days of such compliance, be accorded an opportunity for a hearing and review as provided in § 1303.8.

(2) The sanctions described in paragraphs (1), (5), and (6) of section 209(a) of the order regarding the (i) publication of the names of contractors or unions, (ii) cancellations, termination, and suspension of contracts, and (iii) entering into contracts or extensions or modifications of contracts with noncomplying contractors may be exercised only by or with the approval of the Director.

(b) *Termination.* (1) A contract or subcontract may be canceled or terminated in whole or in part, for failure to comply with the provisions of the equal opportunity clause. Whenever the Director or the TVA Board, or his or its designee, upon prior notification to the Director proposes to cancel or terminate, or cause to be canceled or terminated, in whole or in part, a contract or contracts, a notice of the proposed action, signed by the Director or the TVA Board, or his or its designee, shall be sent to the last known address of the prime contractor or subcontractor, return receipt requested. A copy of such notice shall be sent to all agencies. The prime contractor or subcontractor shall be given at least 10 days from the receipt of the notice either to comply with the provisions of the contract or to mail a request for a hearing to the Director or TVA, as appropriate, under § 1303.8. During the 10-day notice period, reasonable efforts shall continue to be made to secure compliance by conference, mediation, and persuasion.

(2) If at the end of the 10-day period no request for a hearing has been received, the Director or the TVA Board may cancel, suspend, or terminate, or cause to be canceled, suspended, or terminated, such contracts or subcontracts.

(c) *Debarment.* (1) A prime contractor or subcontractor may be debarred from receiving contracts for failure to comply with the provisions of the equal opportunity clause. Whenever the Director, or the TVA Board or his or its designee, upon prior notification to the Director, proposes to debar a prime contractor or subcontractor from further contracts or subcontracts under section 209 of the order, a notice of the proposed action, in writing and signed by the Director or the TVA Board or his or its designee, shall be sent to the last known address of the prime contractor or subcontractor, return receipt requested. A copy of such notice shall be sent to all agencies. The prime contractor or subcontractor shall be given at least 10 days from the receipt of such notice in which to mail a request for a hearing to the Director or TVA. During the 10-day notice period, reasonable efforts shall continue to be made to secure compliance by conference, mediation, and persuasion.

(2) If at the end of the 10-day period no request has been received, the Director or the TVA Board may enter an order debarring the contractor or subcontractor from further contracts, subcontracts, or extensions or other modifications of existing contracts, until such contractor or subcontractor shall have satisfied the Director that he has established and will carry out personnel and employment policies and practices in compliance with the provisions of the equal opportunity clause.

(d) *Referrals.* Referral of any matter arising under the order to the Department of Justice or to the Equal Employment Opportunity Commission shall be made by the Director.

(e) *Show cause notices.* When the Director has reasonable cause to believe that a contractor has violated the equal opportunity clause he may issue

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a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings, or other appropriate action to insure compliance should not be instituted.

§ 1303.6–10 Disputed matters related to the equal opportunity program.

Disputes related to matters pertaining to the equal opportunity program shall be handled pursuant to the provisions of the equal opportunity clause in Government contracts, agreements, and subcontracts, rather than the Disputes clause contained therein.

§ 1303.6–11 Preaward notices.

(a) *Preaward compliance reviews.* Upon the request of the Director, TVA does not enter into contracts or approve the entry into contracts or subcontracts with any bidder, prospective prime contractor, or proposed subcontractor named by the Director, until a preaward compliance review has been conducted and the Director or the TVA Board or his or its designee has approved a determination that the bidder, prospective prime contractor, or proposed subcontractor will be able to comply with the provision of the equal opportunity clause.

(b) *Other special preaward procedures.* Upon the request of the Director, TVA does not enter into contracts or approve the entry into subcontracts with any bidder, prospective prime contractor, or proposed subcontractor, specified by the Director until TVA has complied with the directions contained in the request.

§ 1303.8 Hearings.

§ 1303.8–1 General.

An opportunity for a formal hearing shall be afforded to a prime contractor or a subcontractor by the Director or TVA where:

(a) An apparent violation of the equal opportunity clause by a contractor, as shown by any complaint investigation or compliance review, is not resolved by informal means and a hearing is requested pursuant to § 1303.6–9(a).

(b) The prime contractor or subcontractor, without a hearing, shall have complied with the recommendations or orders of TVA, believes such recommendations or orders to be erroneous and requests a hearing and review pursuant to § 1303.6–9(a).

(c) The Director or TVA proposes to cancel or terminate a contract or subcontract, in whole or in part, and a hearing is requested pursuant to § 1303.6–9(c). The contract or subcontract may be suspended, in the discretion of the Director, during the pendency of the hearing.

(d) The Director or TVA proposes to debar the prime contractor or subcontractor and a hearing is requested pursuant to § 1303.6–9(c). The contract or subcontract may be suspended, in the discretion of the Director, during the pendency of the hearing.

§ 1303.8–2 Informal hearings.

(a) *Purpose.* The Director or the TVA Board with the approval of the Director, may convene such informal hearings as may be deemed appropriate for the purpose of inquiring into the status of compliance by any prime contractor or subcontractor with the terms of the equal opportunity clause.

(b) *Notice.* Contractors and subcontractors shall be advised in writing as to the time and place of the informal hearing and may be directed to bring specific documents and records, or furnish other relevant information concerning their compliance status. When so requested, the prime contractor or subcontractor shall attend and bring requested documents and records, or other requested information.

(c) *Conduct of hearings.* The hearing shall be conducted by hearing officers appointed by the Director or the TVA Board. Parties to informal hearings may be represented by counsel and shall have a fair opportunity to present any relevant material. Formal rules of evidence will not apply to such proceedings.

§ 1303.8–3 Formal hearings.

(a) *General procedure.* The Director or the TVA Board, with the approval of the Director, may convene formal hearings pursuant to the regulations in this part. Such hearings shall be conducted in accordance with procedures prescribed by the Director or

the TVA Board. Reasonable notice of a hearing shall be sent by registered mail, return receipt requested, to the last known address of the prime contractor or subcontractor complained against. Such notice shall contain the following:

(1) The time and place of hearing;

(2) A statement of the provisions of the order and regulations pursuant to which the hearing is to be held; and

(3) A concise statement of the matters pursuant to which the action furnishing the basis of the hearing has been taken or is proposed to be taken.

Copies of such notice shall be sent to all agencies. Hearings shall be held before a hearing officer designated by the Director or the TVA Board. Each party shall have the right to counsel, a fair opportunity to present evidence and argument, and to cross-examine. Whenever a formal hearing is based in whole or in part on matters subject to a collective bargaining agreement and compliance may necessitate a revision of such agreement, any labor organization which is a signatory to the agreement shall have the right to participate as a party. Any other person or organization shall be permitted to participate upon a showing that such person or organization has an interest in the proceedings and may contribute materially to its proper disposition. The hearing officer shall make his proposed findings and conclusions upon the basis of the record before him.

(b) *Suspension during pendency of hearing.* Whenever the prime contractor or subcontractor requests a hearing in accordance with § 1303.6-9(b) and (c), his contracts or subcontracts may be suspended, in the discretion of the Director, during the pendency of the hearing.

(c) *Decision following hearing.* When the hearing is conducted by TVA, the hearing officer shall make recommendations to the TVA Board who shall make a decision. No decision by the TVA Board, or its representatives, shall be final without the prior approval of the Director. When the hearing is conducted by a hearing officer appointed by the Director, the hearing officer shall make recommendations to the Director, who shall make the final decision. Parties shall be furnished with copies of the hearing officer's recommendations, and shall be given an opportunity to submit their views.

§ 1303.9 Reinstatement of ineligible contractors or subcontractors.

Any prime contractor or subcontractor declared ineligible for further contracts or subcontracts under the order may request reinstatement in a letter directed to the Director. In connection with the reinstatement proceedings, the prime contractor or subcontractor shall be required to show that he has established and will carry out employment policies and practices in compliance with the equal opportunity clause.

§ 1303.10 Intimidation and interference.

The sanctions and penalties contained in Subpart D of the order may be exercised by TVA or the Director against any prime contractor, subcontractor, or applicant who fails to take all necessary steps to ensure that no person intimidates, threatens, coerces, or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the order or any other Federal, State, or local laws requiring equal employment opportunity.

§ 1303.11 Affirmative action compliance programs.

(a) *Requirements of programs.* (1) TVA or each applicant shall require each prime contractor who has 50 or more employees and a contract of $50,000 or more and each prime contractor and subcontractor shall require each subcontractor who has 50 or more employees and a subcontract of $50,000 or more to develop a written affirmative action compliance program for each of its establishments. A necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and an evaluation

B-850 O—80—7

of opportunities for utilization of minority group personnel. The contractor programs shall provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups, including, when there are deficiencies, the development of specific goals and timetables for the prompt achievement of full and equal employment opportunity. Each contractor shall include in his affirmative action compliance program a table of job classifications. This table should include, but need not be limited to, job titles, principal duties (and auxiliary duties, if any), rates of pay, and where more than one rate of pay applies (because of length of time in the job or other factors), the applicable rates. The affirmative action compliance program shall be signed by an executive official of the contractor.

(2) Whenever the Director designates a specific construction affirmative action program for a labor area, TVA shall (i) include in its invitations for bids the program requirements connected with the construction project; and (ii) require definite minimum commitments from the low bidder which will satisfy the program, including timetables and reasonable goals.

(b) *Utilization evaluation.* The evaluation of utilization of minority group personnel shall include the following:

(1) An analysis of minority group representation in all job categories;

(2) An analysis of hiring practices for the past year, including recruitment sources and testing, to determine whether equal employment opportunity is being afforded in all job categories; and

(3) An analysis of upgrading, transfer, and promotion for the past year to determine whether equal employment opportunity is being afforded.

(c) *Maintenance of programs.* Within 120 days from the commencement of the contract, each contractor shall maintain a copy of separate affirmative action compliance programs for each establishment, including evaluations of utilization of minority group personnel and the job classification tables, at each local office responsible for the personnel matters of such establishment. An affirmative action compliance program shall be part of the manpower and training plans for each new establishment and shall be developed and made available prior to the staffing of such establishment. A report of the results of such program shall be compiled annually and the program shall be updated at that time. This information shall be made available to representatives of TVA or Director upon request and the contractor's affirmative action program and the result it produces shall be evaluated as part of the compliance review activities.

§ 1303.12 Access to records of employment.

Each prime contracator and subcontractor shall permit access during normal business hours to his books, records, and accounts pertinent to compliance with the order, and all rules and regulations promulgated pursuant thereto by TVA or the Director for purposes of investigation to ascertain compliance with the equal opportunity clause of the contract or subcontract. Information obtained in this manner shall be used only in connection with the administration of the order, the administration of the Civil Rights Act of 1964, and in furtherance of the order and that Act.

§ 1303.13 Rulings and interpretations.

Rulings under or interpretations of the order, the regulations of the Secretary of Labor, and the regulations in this part shall be made by the Secretary or his designee.

§ 1303.14 Solicitations or advertisements for employees.

The requirements of the equal opportunity clause regarding solicitations or advertisements for employees placed by or on behalf of a contractor will be satisfied whenever the contractor or subcontractor complies with any of the following:

(a) States expressly in the solicitations or advertising that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin;

(b) Uses display or other advertising, and the advertising includes an appropriate insignia prescribed by the Director. The use of the insignia is considered subject to the provisions of 18 U.S.C. 701;

(c) Uses a single advertisement, and the advertisement is grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants equal consideration for employment without regard to race, color, religion, sex, or national origin;

(d) Uses a single advertisement in which appears in clearly distinguishable type the phrase "an equal opportunity employer."

§ 1303.15 Existing contracts and subcontracts.

All contracts and subcontracts in effect prior to October 24, 1965, which are not subsequently modified shall be administered in accordance with the nondiscrimination provisions of any prior applicable Executive orders. Any contract or subcontract modified on or after October 24, 1965, shall be subject to Executive Order 11246. Complaints received by and violations coming to the attention of TVA regarding contracts and subcontracts which were subject to Executive Orders 10925 and 11114 shall be processed as if they were complaints regarding violations of this order.

PART 1304—APPROVAL OF CONSTRUCTION IN THE TENNESSEE RIVER SYSTEM AND REGULATION OF STRUCTURES

Subpart A—General Requirements

Sec.
1304.1 Definitions.
1304.2 Scope and intent.
1304.3 Flotation devices and material.
1304.4 Treatment of sewage.
1304.5 Removal of unauthorized, unsafe, and derelict structures.

Subpart B—Approval of Construction

1304.100 Scope and intent.
1304.101 Delegation of authority.
1304.102 Application.
1304.103 Contents of application.
1304.104 Little Tennessee River; date of formal submission.
1304.105 Determination of application.
1304.106 Appeals.
1304.107 Conduct of hearings.
1304.108 Conditions of approvals.
1304.109 Habitable and certain other enclosed structures within the flowage easement areas of TVA reservoirs.

Subpart C—Regulation of Boathouses, Houseboats, Other Floating Structures, and Harbor Limits

1304.200 Scope and intent.
1304.201 Definitions.
1304.202 Designation of harbor areas at commercial boat docks.
1304.203 Houseboats.
1304.204 Floating boathouses.
1304.205 Approval of plans for floating boathouses and nonnavigable houseboats.
1304.206 Numbering and transfer of approved facilities.

AUTHORITY: 16 U.S.C. 831-831dd, unless otherwise noted.

SOURCE: 36 FR 20424, Oct. 22, 1971; 36 FR 22901, Dec. 2, 1971, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

Subpart A—General Requirements

§ 1304.1 Definitions.

Except as the context may otherwise require, the following words or terms, when used in this Part 1304, have the meaning specified in this section.

"Act" means the Tennessee Valley Authority Act of 1933, as amended.

"Applicant" means the person, corporation, State, municipality, political subdivision or other entity making application.

"Application" means a written request for the approval of plans pursuant to section 26a of the Act and the regulations contained in this part.

"Board" means the Board of Directors of TVA.

"Director" means the Director of Land and Forest Resources of TVA.

"TVA" means the Tennessee Valley Authority.

[42 FR 65146, Dec. 30, 1977, as amended at 44 FR 23066, Apr. 18, 1979. Redesignated at 44 FR 30682, May 29, 1979]

§ 1304.2 Scope and intent.

The Act among other things confers on TVA broad powers related to the unified conservation and development of the Tennessee River Valley and surrounding area and directs that property in TVA's custody be used to promote the Act's purposes. In particular, section 26a of the Act requires that TVA's approval be obtained prior to the construction, operation, or maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations along or in the Tennessee River or any of its tributaries. By way of example only, such obstructions include boat docks, piers, boathouses, rafts, buoys, floats, boat launching ramps, fills and nonnavigable houseboats as defined in § 1304.201. Any person considering construction, operating, or maintaining any such structure should carefully study these regulations before doing so. The regulations also apply to certain structures built upon land subject to TVA flowage easements. In the transfer or other disposition affecting shoreline lands within its custody, TVA has also retained land rights to carry out the Act's purposes including rights related to control of water pollution from the use of the land transferred. TVA uses and permits use of the lands and land rights in its custody alongside and subjacent to TVA reservoirs to carry out the purposes and policies of the Act. In addition, recent legislation, including the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. 4321 *et seq.*, and the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.* (FWPCA), have declared it to be congressional policy that agencies should administer their statutory authorities so as to restore, preserve and enhance the quality of the environment and should cooperate in the control of pollution. Unless otherwise noted, all references in this title to these statutes shall be deemed to include any future amendments to them. It is the intent of the regulations prescribed in this Part 1304 to carry out the purposes of the Act and other statutes relating to these purposes, and this part shall be interpreted and applied to that end.

[42 FR 65146, Dec. 30, 1977. Redesignated at 44 FR 30682, May 29, 1979]

§ 1304.3 Flotation devices and material.

(a) Because of the possible release of toxic or polluting substances, and the hazard to navigation from metal drums that become partially filled with water and escape from docks, boathouses, houseboats, floats, and other water-use structures and facilities for which they are used for flotation, the Board has prohibited use of metal drums in any form, except as authorized in paragraph (b) of this section, for flotation of any facilities requiring approval under this part before being constructed or placed on any TVA reservoir.

(b) The only metal drums permitted are those which have been filled with plastic foam or other solid flotation materials and welded, strapped, or otherwise firmly secured in place prior to July 1, 1972, on existing facilities, but replacement of any metal drum flotation permitted to be used by this subsection must be with some type of permanent flotation device or material, for example, pontoons, boat hulls, or other buoyancy devices made of steel, aluminum, fiberglass, or plastic foam, not including filled metal drums.

(c) Every flotation device employed in the Tennessee River system must be firmly and securely affixed to the structure it supports with materials capable of withstanding prolonged exposure to wave wash and weather conditions.

[36 FR 20424, Oct. 22, 1971, as amended at 42 FR 65147, Dec. 30, 1977. Redesignated at 44 FR 30682, May 29, 1979]

§ 1304.4 Treatment of sewage.

No person operating a commercial boat dock on or over real property of the United States in the custody and control of TVA, or on or over real property subject to provisions for the control of water pollution in a deed, grant or easement, lease, license, permit or other instrument from or to the United States or TVA shall permit the mooring on or over such real property of any watercraft or floating structure equipped with a marine

toilet unless such toilet is in compliance with all applicable statutes and regulations, including the FWPCA and regulations issued thereunder.

[42 FR 65147, Dec. 30, 1977. Redesignated at 44 FR 30682, May 29, 1979]

§ 1304.5 Removal of unauthorized, unsafe, and derelict structures.

If, at any time, any dock, wharf, floating boathouse, nonnavigable houseboat, outfall, or other fixed or floating structure or facility anchored, installed, constructed, or moored under a license, permit, or approval from TVA is not constructed in accordance with plans approved by TVA, or is not maintained or operated so as to remain in accordance with such plans, or is not kept in a good state of repair and in good, safe, and substantial condition, and the owner or operator thereof fails to repair or remove such structure (or operate or maintain it in accordance with such plans) within ninety (90) days after written notice from TVA to do so, TVA may cancel such license, permit, or approval and remove such structure, or cause it to be removed, from the Tennessee River system and/or lands in the custody or control of TVA. Such written notice may be given by mailing a copy thereof to the owner's address as listed on the license, permit, or approval or by posting a copy on the structure or facility. TVA will remove or cause to be removed any such structure or facility anchored, installed, constructed, or moored without such license, permit, or approval, whether such license or approval has once been obtained and subsequently canceled, or whether it has never been obtained.

[42 FR 65147, Dec. 30, 1977. Redesignated at 44 FR 30682, May 29, 1979]

Subpart B—Approval of Construction

§ 1304.100 Scope and intent.

Approval must be obtained with respect to each structure subject to section 26a of the Act prior to its construction, operation, or maintenance. This subpart prescribes procedures to be followed in any case where it is desired to obtain such approval.

[42 FR 65147, Dec. 30, 1977. Redesignated at 44 FR 30682, May 29, 1979]

§ 1304.101 Delegation of authority.

The power to approve or disapprove applications under this part is delegated to the Director, subject to appeal to the Board as provided in § 1304.106. In his discretion the Director may submit any application to the Board for its approval or disapproval. Administration of the handling of applications is delegated to the Division of Land and Forest Resources.

[42 FR 65147, Dec. 30, 1977, as amended at 44 FR 23066, Apr. 18, 1979. Redesignated at 44 FR 30682, May 29, 1979]

§ 1304.102 Application.

Applications shall be addressed to Tennessee Valley Authority, Director of Land and Forest Resources, Norris, Tenn. 37828.

[44 FR 20366, Apr. 18, 1979. Redesignated at 44 FR 30682, May 29, 1979]

§ 1304.103 Contents of application.

(a) Each application must be accompanied by five (5) complete sets of plans for the construction, operation, and maintenance of the proposed structure. The application shall be prepared according to "Instructions for Preparing an Application for an Approval of Plans for Proposed Structures Under section 26a of the Tennessee Valley Authority Act." These instructions require that the application include, among other things:

(1) Accurate maps showing the exact location where the structure is proposed to be built, moored, or installed;

(2) Plans, including layout, in scale, of the proposed structure;

(3) Statements of the plans formulated for the maintenance and operation of the structure when completed;

(4) Sufficient information to describe adequately all of the persons, corporations, organizations, agencies, or others who propose to construct, own, and operate such structure; and

(5) A report of the anticipated environmental consequences resulting from the construction, operation, and maintenance of the proposed structure. This report of anticipated envi-

ronmental consequences shall include a discussion of:

(i) The probable impact of the proposed structure on the environment;

(ii) Any probable adverse environmental consequences which cannot be avoided;

(iii) Alternatives to the proposed structure;

(iv) The relationship betweeen the local short-term uses of the environment and the maintenance of long-term productivity which will result from the proposed structure; and

(v) Any irreversible or irretrievable commitments of resources which would be involved by virtue of the proposed structure.

(b) If construction, maintenance, or operation of the proposed structure or any part thereof, or the conduct of the activity in connection with which approval is sought, may result in any discharge into navigable waters of the United States, applicant shall also submit with the application, in addition to the material required by paragraph (a) of this section, a certification from the State in which such discharge would originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge would originate, or from the Environmental Protection Agency, that such State or interstate agency or the Environmental Protection Agency has determined after public notice of applicant's proposal that there is reasonable assurance that applicant's proposed activity will be conducted in a manner which will not violate applicable water quality standards. If construction or operation of the proposed structure will affect water quality but is not subject to any applicable water quality standards, applicant shall submit a written statement to that effect by such State, interstate agency, or the Environmental Protection Agency. The applicant shall further submit such supplemental and additional information as TVA may deem necessary for the review of the application, including, without limitation, information concerning the amounts, chemical makeup, temperature differentials, type and quantity of suspended solids, and proposed treatment plans for any proposed discharges.

(c) Detailed information concerning contents of applications, kinds and amounts of information required to be submitted for specific structures, and instructions are available at the address specified in § 1304.102 or from the Manager of Properties, Division of Land and Forest Resources, Tennessee Valley Authority, at one of the following district offices:

(1) Western District, Post Office Box 280, Paris, Tenn. 38242 (office location: 202 West Blythe Street).

(2) Southern District, 601 First Federal Building, Muscle Shoals, Ala. 35660 (office location: 102 South Court Street, Florence).

(3) Central District, Post Office Box 606, Athens, Tenn. 37303 (office location: 110 Congress Parkway).

(4) Eastern District, 2611 West Andrew Johnson Highway, Morristown, Tenn. 37814.

[42 FR 65147, Dec. 30, 1977, as amended at 44 FR 23066, Apr. 18, 1979. Redesignated at 44 FR 30682, May 29, 1979]

§ 1304.104 Little Tennessee River; date of formal submission.

As regards structures on the Little Tennessee River, applications are deemed by TVA to be "formally submitted" within the meaning of section 26a of the Act, on that date upon which applicant has complied in good faith with all of the provisions of paragraphs (a) and (b) of § 1304.103.

§ 1304.105 Determination of application.

(a) The Division of Land and Forest Resources conducts preliminary investigations, coordinates the processing of applications within TVA; notifies the applicant if preparation and review of an environmental statement are required under NEPA and of what additional information must be submitted to TVA by applicant so that TVA may comply with the requirements of that statute and related legal requirements, and complete its review of the application; and arranges for notification to the Environmental Protection Agency of applications that request approval of plans for structures which may result in a discharge into navigable waters of the United States

and are certified in accordance with the requirements of § 1304.103(b).

(b) Hearings concerning approval of applications are conducted (in accordance with § 1304.107) (1) when requested by the applicant, (2) when TVA deems that a hearing is necessary or appropriate in determining any issue presented by the application, (3) when required under applicable provisions of the FWPCA.

(c) Upon completion of the investigation, coordination of the review of water quality aspects of the application under the FWPCA, completion of review under NEPA if required, and hearing or hearings, if any, the Director approves or disapproves the application on the basis of the application and supporting documents the report of investigation, the transcript of the hearing or hearings, if any be held, the recommendations of other agencies, the intent of this part, and the applicable provisions of the TVA Act, the FWPCA, NEPA, and other applicable laws or regulations. In his discretion the Director may refer any application and supporting materials to the Board for its approval or disapproval.

(d) Promptly following determination, the Director or the Board, as the case may be, furnishes a written copy of the decision to the applicant and to any parties of record pursuant to § 1304.107. In the case of applications initially approved or disapproved by the Board, written requests for reconsideration may be made to the Board in the same manner as provided for appeals under § 1304.106(a).

[42 FR 65148, Dec. 30, 1977, as amended at 44 FR 23066, Apr. 18, 1979. Redesignated at 44 FR 30682, May 29, 1979]

§ 1304.106 Appeals.

(a) If the Director disapproves an application, the applicant may, by written request addressed to the Board of Directors, Tennessee Valley Authority, Knoxville, Tenn. 37902, and mailed within thirty (30) days after receipt of notification of such disapproval, obtain review by the Board of the determination of the Director disapproving the application.

(b) A party of record to any hearing before the Director who is aggrieved or adversely affected by any determination of the Director approving an application, may obtain review by the Board of such determination by written request addressed and mailed as provided in paragraph (a) of this section.

(c) Requests for review shall specify the reasons why it is contended that the Director's determination is in error.

(d) Following receipt of a request for review, the Board will review the material on which the Director's decision was based and may conduct or cause to be conducted such investigation of the application as the Board deems necessary or desirable. The applicant and the person requesting review may submit additional written material in support of his position to the Board within thirty (30) days after receipt by TVA of the request for review. Based on the review, investigation, and written submissions provided for in this paragraph, the Board shall render its decision approving or disapproving the application.

(e) The Board will furnish a written copy of its decision in any review proceeding under this section to the applicant and to all parties of record promptly following determination of the matter.

[36 FR 20424, Oct. 22, 1971; 36 FR 22901, Dec. 2, 1971, as amended at 42 FR 65148, Dec. 30, 1977. Redesignated at 44 FR 30682, May 29, 1979]

§ 1304.107 Conduct of hearings.

(a) If a hearing is to be held for any of the reasons described in § 1304.105(b) TVA gives notice of the hearing to permit attendance by interested persons. Such notice may be given by publication in the FEDERAL REGISTER, publication in a daily newspaper of general circulation in the area of the proposed structure, personal written notice, or a combination of these methods. The notice indicates the place, date and time of hearing, so far as feasible indicates the particular issues to which the hearing will pertain, states the manner of becoming a party of record, and provides other relevant information. The applicant is automatically a party of record.

(b) Hearings may be conducted by the Director and/or such other person or persons as he may designate for that purpose. Hearings are public and are conducted in an informal manner. Parties of record may be represented by counsel or other persons of their choosing. Technical rules of evidence are not observed although reasonable bounds are maintained as to relevancy, materiality, and competency. Evidence may be presented orally or by written statement and need not be under oath. After the hearing has been completed, additional evidence will not be received unless it presents new and material matter that in the judgment of the person or persons conducting the hearing could not be presented at the hearing. Where construction of the project also requires the approval of another agency of the Federal Government by or before whom a hearing is to be held, the Director may arrange with such agency to hold a joint hearing.

§ 1304.108 Conditions of approvals.

(a) Approvals of applications shall contain such conditions as are required by law. Approvals of applications may contain such other conditions as TVA deems necessary to carry out the provisions of the Act, the policy of related statutes, and the intent of this part.

(b) If an approval is granted under this subpart of a structure or facility with respect to which a certificate of compliance with applicable water quality standards has been obtained pursuant to FWPCA and no additional or other Federal permit or license is required for operation of such structure or facility, the holder of the TVA approval shall, prior to initial operation of such structure or facility, provide an opportunity for the certifying state or, if appropriate, the interstate agency or the Environmental Protection Agency to review the manner in which the structure or facility will be operated or conducted, for the purpose of assuring that applicable water quality standards will not be violated.

(c) Except for plans which must be approved only because the proposed structure is to be built upon land subject to a TVA flowage easement, as provided in § 1304.109, no plans will be approved for any structure, including by way of example only, boat docks, piers, fixed boathouses, floats or rafts, if they provide for toilets, living or sleeping quarters, or any type of enclosed floor space in excess of 25 square feet, not including walkways around boat wells or mooring slips. Such walkways shall not exceed 4 feet in width unless, in the sole judgment of the Director, the size of the well or slip justifies a greater width. For the purposes of this subsection, floor space shall not be deemed *enclosed* solely because of plans providing for the use of wire mesh or similar screening which leaves the interior of the structure of facility open to the weather: *And, provided further,* That nothing contained in this paragraph shall be construed as prohibiting enclosure of the boat well or mooring slip proper. In the case of applications for structures to be used as part of a public boat dock, marina, or other public or commercial facility, the requirements of this paragraph (c) may be waived or modified by the Director if he considers such waiver necessary or desirable for proper development of the facility.

[36 FR 20424, Oct. 22, 1971; 36 FR 22901, Dec. 2, 1971, as amended at 42 FR 65148, Dec. 30, 1977; 43 FR 6766, Feb. 16, 1978. Redesignated at 44 FR 30682, May 29, 1979]

§ 1304.109 Habitable and certain other enclosed structures within the flowage easement areas of TVA reservoirs.

In addition to all other requirements of this part, any structure built upon land subject to a flowage easement held by TVA shall be deemed an obstruction affecting navigation, flood control, or public lands or reservations within the meaning of section 26a of the Act if it:

(a) Is a fixed enclosed structure having a cost-in-place in excess of five thousand dollars; or

(b) Is designed or used for human habitation, regardless of cost; or

(c) Involves a discharge into the navigable waters of the United States.

Such obstructions shall be subject to all requirements of this subpart, but nothing contained in this section shall

be construed to be in derogation of the rights of the United States or of TVA under any flowage easement held by TVA.

For purposes of this section "enclosed structure" shall mean a structure enclosed overhead and on all sides so as to keep out weather.

[42 FR 65148, Dec. 30, 1977. Redesignated at 44 FR 30682, May 29, 1979]

Subpart C—Regulation of Boathouses, Houseboats, Other Floating Structures, and Harbor Limits

§ 1304.200 Scope and intent.

This subpart prescribes regulations governing designation of harbor areas at commercial boat docks and the approval of structures and facilities which can be moored or installed in such areas and in other areas in the Tennessee River and its tributaries, all in such a manner as to avoid obstruction of or interference with navigation and flood control, avoid or minimize adverse effects on public lands and reservations, prevent the preemption of public waters by houseboats moored in permanent or semipermanent locations outside such harbors and used as floating dwellings, attain the widest range of beneficial uses of land and land rights owned by the United States of America, enhance reasonable recreational use of TVA reservoirs by all segments of the general public, protect lands and land rights owned by the United States alongside and subjacent to TVA reservoirs from trespass and other unlawful or unreasonable uses, and maintain, protect, and enhance the quality of the human environment.

[42 FR 65148, Dec. 30, 1977. Redesignated at 44 FR 30682, May 29, 1979]

§ 1304.201 Definitions.

For the purposes of this subpart, in addition to any definitions contained elsewhere in this part, the following words or terms shall have the meaning specified in this section, unless the context requires otherwise:

"Existing" as applied to floating boathouses or other structures, except houseboats, means those which were moored, anchored, or otherwise installed on, along, or in a TVA reservoir on or before July 1, 1972.

"Existing" as applied to houseboats shall mean those which were moored, anchored, or otherwise installed on, along, or in a TVA reservoir on or before February 15, 1978.

"Floating boathouse" means a floating structure or facility, any portion of which is enclosed, capable of storing or mooring any houseboat or other vessel under cover.

"Houseboat" means any vessel which is equipped with enclosed or covered sleeping quarters.

"Navigable houseboat" means any self propelled houseboat having maneuverability which is (a) built on a boat hull or on two or more pontoons; (b) equipped with motor and rudder controls located at a point on the houseboat from which there is forward visibility over a 180° range; and (c) in compliance with all applicable State and Federal requirements relating to watercraft: *Provided, however,* That any existing houseboat which was deemed navigable under the provisions of the former § 1304.201, which became effective November 21, 1971, shall continue to be deemed navigable for all purposes of this subpart, except that such houseboats shall be subject to the provisions of § 1304.203(d).

"New" as applied to houseboats, floating boathouses, floats, or other structures means all houseboats, floating boathouses, or structures, other than existing ones.

"Nonnavigable houseboat" means a houseboat not in compliance with one or more of the criteria defining a navigable houseboat.

"Pontoon" means an elongated watertight box or cylinder extending fore and aft for the full length of a vessel and having a sloped or molded bow to facilitate movement through the water.

"Vessel" means any watercraft or other structure or contrivance used or capable of use as a means of water transportation, such as a boat, floatboat, or houseboat.

[42 FR 65148, Dec. 30, 1977; 43 FR 6766, Feb. 16, 1978. Redesignated at 44 FR 30682, May 29, 1979]

§ 1304.202 Designation of harbor areas at commercial boat docks.

The landward limits of harbor areas are determined by the extent of land rights held by the dock operator. The lakeward limits of harbors at commercial boat docks will be designated by TVA on the basis of the size and extent of facilities at the dock, navigation and flood control requirements, optimum use of lands and land rights owned by the United States, and on the basis of the environmental effects associated with the use of the harbor. Mooring buoys or slips and indefinite anchoring are prohibited beyond such lakeward limits, except as otherwise provided in this subpart.

§ 1304.203 Houseboats.

(a) No new nonnavigable houseboat shall be moored, anchored, or installed in any TVA reservoir.

(b) Existing nonnavigable houseboats may remain in TVA reservoirs subject to the provisions of paragraph (d) of this section, but only if:

(1) They have flotation devices complying with § 1304.3; (2) they are approved and numbered pursuant to §§ 1304.205 and 1304.206; and (3) they are moored in compliance with paragraph (c) of this section.

(c) Existing nonnavigable houseboats shall be moored:

(1) To mooring facilities provided by a commercial dock operator within the designated harbor limits of his dock; or

(2) To the bank of the reservoir outside the designated harbor limits of commercial boat docks, if the houseboat owner is the owner or lessee of the abutting property at the mooring location (or the licensee of such owner or lessee) and has requested and obtained from TVA, pursuant to § 1304.205, written approval authorizing mooring at such location.

(d) Ordinary maintenance and repair of existing nonnavigable houseboats permitted to be moored pursuant to this section may be continued, including replacement of metal drum flotation as required by § 1304.3, but such houseboats may not be structurally modified or expanded, nor may they be replaced, rebuilt, or returned to the reservoir when they have been abandoned, destroyed, or removed from the reservoir, or have deteriorated or been damaged so as to be unusable and unrepairable.

[42 FR 65149, Dec. 30, 1977; 43 FR 6766, Feb. 16, 1978. Redesignated at 44 FR 30682, May 29, 1979]

EDITORIAL NOTE: For an interpretation of § 1304.203, see the appendix to § 1304.204.

§ 1304.204 Floating boathouses.

(a) Floating boathouses may be moored in TVA reservoirs only if:

(1) They have flotation devices complying with § 1304.3; (2) they are approved and numbered pursuant to §§ 1304.205 and 1304.206; and (3) they are moored in compliance with paragraph (b) of this section.

(b) All floating boathouses shall be moored:

(1) To mooring facilities provided by a commercial dock operator within the designated harbor limits of his dock or

(2) To the bank of the reservoir outside the designated harbor limits of a commercial boat dock, if the boathouse owner is the owner or lessee of the abutting property at the mooring location (or the licensee of such owner or lessee) and has requested and obtained from TVA, pursuant to § 1304.205, written approval authorizing mooring at such location.

(c) Ordinary maintenance and repair of existing floating boathouses permitted to be moored pursuant to this section may be continued, including replacement of metal drum flotation as required by § 1304.3, but such floating boathouses may not be structurally modified or expanded, or replaced, rebuilt, or returned to the reservoir when they have been abandoned, destroyed, or removed from the reservoir, or have deterioriated or been damaged, so as to be unusable or unrepairable: *Provided, however,* That such floating boathouses may be so structurally modified or expanded, replaced, rebuilt, or so returned to the reservoir if they comply with all the requirements of § 1304.205(d) and approval is obtained under that section as for a new floating boathouse.

APPENDIX—INTERPRETATIONS OF §§ 1304.203 AND 1304.204

1. Sections 1304.203(a) and 1304.204(a) of Title 18 of the Code of Federal Regulations prohibit new nonnavigable houseboats and new floating boathouses not meeting the requirements of § 1304.205(d) in TVA reservoirs. These sections also provide that existing nonnavigable houseboats approved for continued mooring on TVA reservoirs and all floating boathouses shall be moored: (1) To mooring facilities provided by a commercial dock operator within the designated harbor limits of his dock; or (2) to the bank of the reservoir outside the designated harbor limits of commercial boat docks, if the houseboat or boathouse owner is the owner or lessee of the abutting property at the mooring location (or the licensee of such owner or lessee) and has requested and obtained from TVA, pursuant to § 1304.205, written approval authorizing mooring at such location.

In all cases where more than one person owns or leases the abutting property at a present or proposed mooring location as tenants in common or in any other sort of cotenancy, TVA interprets the terms "the owner or lessee of the abutting property" and "such owner or lessee" in 18 CFR 1304.203(c)(2) and 1304.204(b)(2) as meaning all of the owners of such abutting property. The owner or owners of only a fractional interest or of fractional interests totalling less than one in any such property shall under no circumstances be considered, by virtue of such fractional interest or interests only, to be the "owner or lessee" of such abutting property for the purposes of 18 CFR 1304.203(c)(2) or 1304.204(b)(2) and, as such, eligible to moor or license others to moor as provided therein without the consent of the other coowners.

(Sec. 26a of the Tennessee Valley Authority Act of 1933, *as amended* (16 U.S.C. 831y-1))

[42 FR 65149, Dec. 30, 1977. Redesignated at 44 FR 30682, May 29, 1979, and amended at 48 FR 9639, Mar. 8, 1983]

§ 1304.205 Approval of plans for floating boathouses and nonnavigable houseboats.

(a) Existing nonnavigable houseboats and all floating boathouses must be approved pursuant to this subpart and the provisions of Subpart B of this part.

(b) Persons proposing to moor new floating boathouses shall submit applications to TVA prior to commencement of construction or mooring thereof. Applications shall be accompanied by plans showing in reasonable detail the size and shape of the facility; the kind of flotation device; the proposed mooring locations thereof; whether a marine toilet is on the facility; and the name and mailing address of the owner. TVA shall be kept advised of any changes in the kind of flotation devices which may be made by the applicant after approval is granted. Plans described in this section shall be in lieu of the plans specified in § 1304.103(a).

(c) If the proposed mooring location is outside the designated harbor limits of a commercial boat dock, the application and plans shall be accompanied by evidence satisfactory to TVA showing that the applicant is the owner or lessee of the abutting property at the proposed mooring location, or the licensee of such owner or lessee.

(d) Applications for new floating boathouses will be disapproved if the plans provide for toilets, living or sleeping quarters, or enclosed spaces with more than 25 square feet of floor space, not including walkways around boat wells or mooring slips. Such walkways shall not exceed 4 feet in width unless, in the sole judgment of the Director, the size of the well or slip justifies a greater width. A new floating boathouse or part thereof shall not be deemed "enclosed" solely because of plans providing for the use of wire mesh or similar screening which leaves the interior of the structure open to the weather, and nothing contained in this subsection shall be construed as prohibiting enclosure of the boat well or mooring slip proper. Plans for any new floating boathouses will also be disapproved if the proposed flotation device includes metal drums in any form.

(e) Applications for mooring outside designated harbor limits will be disapproved if TVA determines that such proposed mooring location will be contrary to the intent of this subpart, of § 1304.2, or of any applicable law. Applications will also be disapproved if marine toilets not in compliance with § 1304.4 are proposed.

(f) Approvals of applications shall contain such conditions as may be required by law and may contain such other conditions as TVA determines to be necessary or desirable to carry out

the intent of this subpart, this part or other applicable law. Included, without limitation, among such conditions are conditions relating to the mooring of houseboats and floating boathouses at locations outside the designated harbor limits of commercial boat docks. Strict compliance with all conditions will be required.

[36 FR 20424, Oct. 22, 1971; 36 FR 22901, Dec. 2, 1971, as amended at 42 FR 65149, Dec. 30, 1977. Redesignated at 44 FR 30682, May 29, 1979]

§ 1304.206 Numbering and transfer of approved facilities.

(a) Upon approval of an application concerning a nonnavigable houseboat or floating boathouse, TVA will assign a number to such facility. The owner of the facility shall paint such number on, or attach a facsimile thereof to, a readily visible part of the outside of the facility in letters not less than three (3) inches high. The placement of such number shall be consistent with the requirements of any State or Federal law or regulation concerning numbering of watercraft.

(b) The transferee of any floating boathouse or nonnavigable houseboat approved pursuant to this part and which, after transfer, remains subject to this part, shall promptly report such transfer to TVA. A facility moored at a location approved pursuant to this part shall not be moored at a different location without prior approval of such location by TVA under this subpart, except for transfers of location to or between mooring facilities provided by commercial dock operators within the designated harbor limits of their docks.

[36 FR 20424, Oct. 22, 1971; 36 FR 22901, Dec. 2, 1971, as amended at 42 FR 65149, Dec. 30, 1977. Redesignated at 44 FR 30682, May 29, 1979]

PART 1305—LAND BETWEEN THE LAKES

Subpart A—Use of Motorized Vehicles

Sec.

1305.1 Motor vehicles generally.
1305.2 Motorcycles.
1305.3 Off-road vehicles.
1305.4 Major off-road vehicle areas.
1305.5 Mini-bike areas at family campgrounds as designated.
1305.6 Enforcement.

AUTHORITY: 16 U.S.C. 831-831dd. Sections 1305.1 to 1305.6 also issued under 42 U.S.C. 4321 and E.O. 11644, 37 FR 2877.

SOURCE: 38 FR 5458, Mar. 1, 1973, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

Subpart A—Use of Motorized Vehicles

§ 1305.1 Motor vehicles generally.

All properly licensed motor vehicles may be operated on paved, graveled, or graded roads unless otherwise posted or gated or barricaded, and on other roads if specifically authorized in writing by an authorized Land Between the Lakes official. Driving in woods or fields or on foottrails or utility rights of way is prohibited, except as authorized in §§ 1305.3 through 1305.5. Drivers must hold a valid State operator's license to drive on improved roads. All vehicles must be equipped with properly functioning mufflers. Maximum speed within Land Between the Lakes is 35 miles per hour or less, if so posted, except on the Trace and U.S. Highway 68, where a maximum speed of 60 miles per hour is permitted unless posted for reduced speeds.

§ 1305.2 Motorcycles.

Motorcycles of all types shall be equipped with properly functioning spark arresters. Safety requirements for motorcycle riders on improved roads are safety helmets and protective eyewear.

§ 1305.3 Off-road vehicles.

Except for operation as authorized in § 1305.1, off-road vehicles, including trail bikes and mini-bikes, may be operated only within the posted boundaries of areas designated by TVA for this purpose during daylight hours, in accordance with posted regulations, and at the sole risk of the operator. TVA recommends that off-road vehicle riders follow all safety practices recommended by the American Motorcycle Association regarding safety helmets, heavy shoes, protective clothing

and protective shatterproof eyewear. All vehicles shall be equipped with properly functioning mufflers, and motorcycles with spark arresters. No vehicles emitting an unusually loud noise may be operated in such areas. All operation of such vehicles shall be in full compliance with applicable State laws. If such laws permit operation within such areas without registration and licensing, any unlicensed bikes must be transported to the areas.

§ 1305.4 Major off-road vehicle areas.

(a) Off-road vehicles of all kinds, including trail bikes and mini-bikes, may be operated within the posted boundaries of major off-road vehicle areas, which include trails, camping space, unloading ramps, and sanitary facilities. The only area presently so designated is the Turkey Bay Off-Road Vehicle Area, a 2,500-acre tract reached by a drive running west off the Trace approximately 2¼ miles south of the U.S. Highway 68 overpass.

(b) Off-road vehicles may be operated in these areas from 8 a.m. until 30 minutes before sundown. Motors must be off at all other times except for the purpose of entering or leaving the area.

(c) The areas will not be made available for competitive events sponsored by any organized riding groups.

(d) All one-way and other directional signs on trails shall be strictly observed.

(e) Signs designating cemeteries, experimental plantings, and other portions of these areas as off limits to riders shall be strictly observed.

(f) All garbage and other debris must be placed in containers provided.

(g) Riders and campers in the areas shall not harass or otherwise disturb other persons or wildlife in any way.

§ 1305.5 Mini-bike areas at family campgrounds as designated.

(a) Mini-bikes and small trail bikes may be ridden on marked trails and within posted boundaries in areas designated for that purpose at family campgrounds. Such areas are presently designated at the Piney and Hillman Ferry campgrounds.

(b) These areas are open from 9:30 a.m. until 30 minutes before sundown.

(c) All bikes must be equipped with a properly functioning combination muffler and U.S. Forest Service-approved spark arrester.

(d) All one-way and other directional signs on trails shall be strictly observed.

(e) Reckless operation, horseplay, and any action endangering or disturbing other users is prohibited.

§ 1305.6 Enforcement.

Persons violating any of the foregoing rules and regulations may be excluded from Land Between the Lakes or denied use of the areas and trails designated for operation of off-road vehicles, as deemed appropriate by authorized officials of Land Between the Lakes.

PART 1306—RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

Subpart A—Regulations and Procedures

Sec.

1306.1 Purpose and applicability.
1306.2 Persons eligible for benefits.
1306.3 Assurance of adequate replacement housing prior to displacement.
1306.4 Definition of decent, safe, and sanitary dwellings.
1306.5 Moving and related expenses allowable under section 202(a) of Pub. L. 91-646.
1306.6 Exclusions on moving expenses and losses.
1306.7 Payments under sections 202(b) and (c) of Pub. L. 91-646, in lieu of moving and related expenses.
1306.8 Submittal of claims.
1306.9 Replacement housing payments to homeowners under section 203(a) of Pub. L. 91-646
1306.10 Replacement housing payments to tenants and certain others under section 204 of Pub. L. 91-646.
1306.11 Computation of replacement housing payment for displaced tenants—rental replacement housing payment.
1306.12 Disbursement of rental replacement housing payment.
1306.13 Purchases-replacement housing payment.
1306.14 Computation of replacement housing payments for certain others.
1306.15 Initiation of negotiations.

Sec.

1306.16 Relocation assistance advisory services under section 205 of Pub. L. 91-646.
1306.17 Federally assisted programs.
1306.18 Uniform real property acquisition policy.
1306.19 Surrender of possession.
1306.20 Rent after acquisition.
1306.21 Tenants' rights in improvements.
1306.22 Expense of transfer of title and proration of taxes.
1306.23 Administrative review.

AUTHORITY: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note); 48 Stat. 58, as amended (16 U.S.C. 831-831dd).

SOURCE: 38 FR 3592, Feb. 8, 1973, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

Subpart A—Regulations and Procedures

§ 1306.1 Purpose and applicability.

(a) *Purpose.* The purpose of the regulations and procedures in this Subpart A is to implement Uniform Relocation Assistance and Real Property acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, Stat. 246-256, 42 U.S.C. 4601 note) (Uniform Act, as amended).

(b) *Applicability.* (1) Titles and I and II of the Uniform Act, as amended, govern relocation assistance by TVA. For TVA program activities undertaken after April 1, 1989, relocation assistance under those titles will be governed by implementing regulations set forth in Subpart A and Subparts C through G of 49 CFR Part 24.

(2) Regulations and procedures for complying with the real property acquisition provisions of Title III of the Uniform Act, as amended, are set forth in this part.

[52 FR 48019, Dec. 17, 1987 and 54 FR 8912, Mar. 2, 1989, as amended at 52 FR 48019, Dec. 17, 1987]

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.1 was amended by revising paragraph (b), effective April 2, 1989. For the convenience of the user, the superseded text follows.

§ 1306.1 Purpose and applicability.

* * * * *

(b) *Applicability.* (1) Titles I and II of the Uniform Act, as amended, govern relocation assistance by TVA. For TVA program activities undertaken after January 19, 1988, relocation assistance under those titles will be governed by implementing regulations set forth in Subpart A and Subparts C through G of 49 CFR Part 24, in lieu of §§ 1306.2 through 1306.17 and 1306.23 of this part.

(2) For program activities undertaken prior to January 19, 1988, relocation assistance will (until April 2, 1989) be governed by §§ 1306.2 through 1306.17 and § 1306.23.

(3) Regulations and procedures for complying with the real property acquisition provisions to Title III of the Uniform Act, as amended, are set forth in this part.

§ 1306.2 Uniform real property acquisition policy.

(a) Before negotiations are initiated for acquisition of real property, the Chief of TVA's Land Branch will cause the property to be appraised and establish an amount believed to be just compensation therefor. The appraiser shall afford the owner or his representative an opportunity to accompany him during his inspection of the property.

(b) When negotiations are initiated to acquire real property, the owner will be given a written statement of, and summary of the basis for, the amount estimated as just compensation. The statement will identify the property and the interest therein to be acquired, including buildings and other improvements to be acquired as a part of the real property, the amount of the estimated just compensation, and the basis therefor. If only a portion of the property is to be acquired, the statement will include a statement of damages and benefits, if any, to the remainder.

[38 FR 3592, Feb. 8, 1973 and 54 FR 8912, Mar. 2, 1989. Redesignated at 52 FR 48019, Dec. 17, 1987]

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.2 was removed and a new § 1306.2 was redesignated from § 1306.18, effective April 2, 1989. The remov-

al and redesignation were confirmed at 54 FR 8912, Mar. 2, 1989. For the convenience of the user, the superseded text follows.

§ 1306.2 Persons eligible for benefits.

(a) Those eligible for benefits under these regulations are those persons, including individuals, partnerships, corporations, or associations, who on or after January 2, 1971, move from real property, or move their personal property from real property, as a result of TVA's acquisition of such real property, or move as the result of a written notice, served personally or by certified (or registered) first-class mail, from TVA to vacate real property. Also eligible, but only for payment of moving and related expenses as provided in §§ 1306.5 through 1306.7 and for relocation assistance advisory service as provided in § 1306.16, are those persons who move as a result of TVA's acquisition of or as the result of a written notice from TVA to vacate other real property, on which any such person conducts a business or farm operation.

(b) In order to qualify for benefits under these regulations either of two conditions must be met:

(1) The person must have moved (or moved his personal property) as a result of the receipt of a written notice to vacate which may be given before or after initiation of negotiations for acquisition of the property, or

(2) The property must in fact, have been acquired and the person must have moved as a result of its acquisition.

(c) A displaced person may not be paid for more than one move in relation to a single project unless the Chief of TVA's Land Branch of the Division of Property and Supply finds it to be equitable to pay for a subsequent move and gives approval for such payment prior to the subsequent move.

(d) Multiple occupancy of a dwelling shall be treated as a single occupancy in applying replacement housing benefits, except that each family in a dwelling shall be considered separately for such benefits, and individuals may be entitled to receive moving and related expenses. The term "family" refers to all persons living together who are related either by blood, law, guardianship, or adoption.

§ 1306.3 Surrender of possession.

Possession of real property will not be taken until the owner has been paid the agreed purchase price or TVA's estimate of just compensation has been deposited in court in a condemnation proceeding. To the greatest extent practicable, no person will be required to move from property acquired by TVA without at least 90 days' written notice thereof.

[38 FR 3592, Feb. 8, 1973 and 54 FR 8912, Mar. 2, 1989. Redesignated at 52 FR 48019, Dec. 17, 1987]

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.3 was removed and a new § 1306.3 was redesignated from § 1306.19, effective April 2, 1989. The removal and redesignation were confirmed at 54 FR 8912, Mar. 2, 1989. For the convenience of the user, the superseded text follows.

§ 1306.3 Assurance of adequate replacement housing prior to displacement.

Prior to proceeding with any phase of a project which phase will cause the displacement of any person, the Chief of TVA's Land Branch will determine that, within a reasonable period of time prior to displacement, there will be available on a basis consistent with Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, 82 Stat. 81 (42 U.S.C. 3601), decent, safe, and sanitary dwellings, as described in § 1306.4, equal in number to the number of, and available to, such displaced persons who require such dwellings and reasonably accessible to their places of employment. Such dwellings should be in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents and prices within the financial means of the families and individuals displaced. Such determination will be based on a current survey and analysis of available replacement housing which takes into account the competing demands on available housing. When the survey and analysis indicates a need for new replacement housing, the Division of Navigation Development and Regional Studies will assist Land Branch in securing such housing through coordination with appropriate Federal agencies and local and regional housing authorities, or, if necessary, in developing this capability.

§ 1306.4 Rent after acquisition.

If TVA rents real property acquired by it to the former owner or former tenant, the amount of rent shall not exceed the fair rental value on a short-term basis.

[38 FR 3592, Feb. 8, 1973 and 54 FR 8912, Mar. 2, 1989. Redesignated at 52 FR 48019, Dec. 17, 1987]

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.4 was removed and a new § 1306.4 was redesignated from § 1306.20, effective April 2, 1989. The removal and redesignation were confirmed at 54

FR 8912, Mar. 2, 1989. For the convenience of the user, the superseded text follows.

§ 1306.4 Definition of decent, safe, and sanitary dwellings.

A decent, safe, and sanitary dwelling is one which is found to be in sound, clean, and weather-tight condition, and which meets local housing codes for the type of dwelling. If there are no applicable local housing codes, a housekeeping unit must include a kitchen with fully usable sink; a stove or connections for same; a separate complete bathroom; hot and cold running water in both the bathroom and kitchen; an adequate and safe wiring system for lighting and other electrical services; and heating as required by climatic conditions and regional housing codes. A nonhousekeeping unit should meet local standards customary for boarding houses, hotels, or other congregate living in the area. Any dwelling unit considered suitable as replacement housing should be reasonably convenient to such community facilities as schools, stores, and public transportation. Adjustments may be made only in cases of unusual circumstances or in unique geographic areas.

§ 1306.5 Tenants' rights in improvements.

Tenants of real property being acquired by TVA will be paid just compensation for any improvements owned by them, whether or not they might have a right to remove such improvements under the terms of their tenancy. Such payment will be made only upon the condition that all right, title, and interest of the tenant in such improvements shall be transferred to TVA and upon the further condition that the owner of the real property being acquired shall execute a disclaimer of any interest in said improvements.

[38 FR 3592, Feb. 8, 1973 and 54 FR 8912, Mar. 2, 1989. Redesignated at 52 FR 48019, Dec. 17, 1987]

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.5 was removed and a new § 1306.5 was redesignated from § 1306.21, effective April 2, 1989. The removal and redesignation were confirmed at 54 FR 8912, Mar. 2, 1989. For the convenience of the user, the superseded text follows.

§ 1306.5 Moving and related expenses allowable under section 202(a) of Pub. L. 91-646.

(a) Upon receipt by TVA of a proper application from any displaced person who is eligible and elects to receive the benefits of section 202(a) of Pub. L. 91-646, TVA will reimburse the displaced person for expenses incurred by him in moving as follows:

(1) Transportation of himself, his family, and their personal property from the acquired site to the replacement site, not to exceed a distance of 50 miles, unless the Chief of TVA's Land Branch determines that relocation beyond the 50-mile area is justified.

(2) Packing and unpacking, crating and uncrating, of personal property.

(3) Storage of personal property for a period not to exceed 12 months when approved in advance by the Chief of TVA's Land Branch as necessary pending availability of a replacement dwelling.

(4) Insurance premium paid to cover loss and damage of personal property while in storage or transit.

(5) Removal and reinstallation of machinery, equipment, appliances, and other items not acquired by TVA in the purchase of or as real property. Prior to payment under this subparagraph, the displaced person shall agree in writing that the property is personalty and that TVA is released from any payment for the property.

(6) An amount not to exceed the estimated cost of moving commercially, if the displaced person accomplishes the move himself.

(7) Expenses, not to exceed $500, unless the Chief of TVA's Land Branch determines that a greater amount is justified, in searching for a replacement business or farm as follows:

(i) Actual travel costs.

(ii) Extra costs for meals and lodging.

(iii) Time spent in searching at the rate of the displaced person's salary or earnings, not to exceed $10 per hour.

(iv) Broker or realtor fees in locating a replacement business or farm operation, provided the Chief of TVA's Land Branch has approved such employment in advance.

(b) When an item of personal property which is used in connection with any business or farm operation is not moved but is sold and promptly replaced with a comparable item, reimbursement shall not exceed the replacement cost minus the proceeds received from the sale, or the cost of moving, whichever is less.

(c) When personal property which is used in connection with any business or farm operation to be moved is of low value and high bulk, and the cost of moving would be disproportionate in relation to the value, in the sole judgment of the Chief of TVA's Land Branch, the allowable reimbursement for the expense of moving the personal property shall not exceed the difference between the amount which would have been received for such item on liquidation and the cost of replacing the same with a comparable item available on the market. This

provision is applicable in such cases as the moving of junk yards, stockpiled sand, gravel, minerals, metals, and similar items of personal property.

(d) If the cost of moving or relocating an outdoor advertising display is determined to be equal to or in excess of the in-place value of the display, TVA may at its option acquire such display as a part of the real property.

(e) In the case of a business or farm operation, if the displaced person does not move the personal property he shall be required to make a bona fide effort to sell it and will be eligible for reimbursement for the reasonable cost incurred. If the personal property is sold and the business or farm operation is reestablished, the displaced person is entitled to payment provided in paragraph (b) of this section. If the business or farm operation is discontinued, the displaced person is entitled to the difference between the in-place value of the personal property and the sale proceeds, but in no event shall such payment exceed the cost of moving 50 miles. If the personal property is abandoned, the displaced person is entitled to payment for the difference between the in-place value and the amount which would have been received from the sale of the item, but in no event shall such payment exceed the cost of moving 50 miles. The cost to TVA in removing abandoned personal property shall not be considered as an offsetting charge against payments to the displaced person.

§ 1306.6 Expense of transfer of title and proration of taxes.

In connection with the acquisition of real property by TVA:

(a) TVA will, to the extent it deems fair and reasonable, bear all expenses incidental to the transfer of title to the United States, including penalty costs for the prepayment of any valid preexisting recorded mortgage;

(b) Real property taxes shall be prorated to relieve the seller from paying taxes which are allocable to a period subsequent to vesting of title in the United States or the date of possession, whichever is earlier.

[38 FR 3592, Feb. 8, 1973 and 54 FR 8912, Mar. 2, 1989. Redesignated at 52 FR 48019, Dec. 17, 1987]

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.6 was removed and a new § 1306.6 was redesignated from § 1306.22, effective April 2, 1989. The removal and redesignation were confirmed at 54 FR 8912, Mar. 2, 1989. For the convenience of the user, the superseded text follows.

§ 1306.6 Exclusions on moving expenses and losses.

Reimbursement for moving expenses shall not include the following:

(a) Additional expenses incurred because of living in a new location.

(b) Cost of moving structures, improvements, or other real property in which the displaced person reserve ownership.

(c) Improvements to the replacement site, except when required by law.

(d) Interest on loans to cover moving expenses.

(e) Loss of goodwill.

(f) Loss of trained employees.

(g) Personal injury.

(h) Cost of preparing the application for moving and related expenses.

(i) Modification of personal property to adapt it to the replacement site, except when required by law.

(j) Loss of profits.

(k) Such other items as the Chief of TVA's Land Branch determines should be excluded.

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.7 was removed, effective April 2, 1989. The removal was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.7 Payments under sections 202(b) and (c) of Pub. L. 91-646, in lieu of moving and related expenses.

(a) *Dwellings.* Any displaced person eligible for payments under § 1306.5 of this subpart who is displaced from a dwelling may elect to accept the following payments in lieu of the payments authorized therein:

(1) A dislocation allowance of $200; and

(2) A moving expense allowance, not to exceed $300, based on current moving expense schedules approved by the Federal Highway Administration. A displaced person who elects to receive a payment based on a schedule shall be paid under the schedule used in the jurisdiction in which the displacement occurs, regardless of where he relocates.

(b) *Business and farm operations.* Any person eligible for payments under § 1306.5 who is displaced from his place of business or from his farm operation may elect to accept, in lieu of the payments authorized under § 1306.5, a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than $2,500 nor more than $10,000. The term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the 2 taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property ac-

quired, or during such other period as the Chief of TVA's Land Branch determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period. (If a business or farm operation has no net earnings, or has suffered losses during the period used to compute "average annual net earnings," it may nevertheless receive a $2,500 minimum payment.)

(c) To be eligible for payment under § 1306.7(b), a business (other than a nonprofit organization) must contribute materially to the income of the displaced owner. Part-time family occupations which do not contribute materially to a displaced person's income are not eligible. Also, no business relocation payment shall be made under § 1306.7(b) unless the Chief of TVA's Land Branch is satisfied that the business (including a nonprofit organization) cannot be relocated without a substantial loss of its existing patronage and is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States which is engaged in the same or similar business. In determining whether the business cannot be relocated without a substantial loss of its existing patronage, the following factors will be considered:

(1) The type of business conducted by the displaced person;

(2) The nature of the clientele of the displaced concern; and

(3) The relative importance of the present and proposed location of the displaced business.

(d) Where an entire farm is not acquired, payment under § 1306.7(b) will be made only if the Chief of TVA's Land Branch determines that prior to its acquisition the farm met the definition of a farm operation set out in section 101(8) of Pub. L. 91-646 and that the property remaining after acquisition is no longer an economic farm unit.

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.8 was removed, effective April 2, 1989. The removal was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.8 Submittal of claims.

All claims for reimbursement of moving expenses or for payments in connection with such expenses must be submitted to the Chief of TVA's Land Branch on prescribed forms no later than 18 months after the move is completed.

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.9 was removed, effective April 2, 1989. The removal was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.9 Replacement housing payments to homeowners under section 203(a) of Pub. L. 91-646.

(a) In addition to payments for moving and related expenses, a displaced person may receive payment not in excess of $15,000 if such person:

(1) Was displaced from a dwelling actually owned ("owned" refers to an interest in the title which allows absolute physical control) and occupied by him for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of the property on which the dwelling is located, and

(2) Purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of 1 year from the date he receives payment for the acquired dwelling or the date he moves from said dwelling, whichever is the later date.

(b) Payment under this § 1306.9 shall consist of the following:

(1) The amount, if any, which when added to the acquisition cost of the dwelling acquired by TVA, equals the reasonable cost of a comparable replacement dwelling as established by TVA. A comparable replacement dwelling for such purpose shall be deemed to be one which is decent, safe, and sanitary and as functionally equivalent to and substantially the same as the acquired dwelling (but not excluding newly constructed housing) with respect to the number of rooms, area of living space, age, state of repair, neighborhood, and places of employment, and is within the financial means of the displaced family or individual: *Provided*, That if no dwelling meeting these basic criteria is available on the market, the Chief of TVA's Land Branch, upon a proper finding of the need therefor, may consider available housing exceeding such criteria.

(2) The amount, if any, that will compensate the displaced person for any increased interest cost he may be required to pay for financing the acquisition of such comparable replacement dwelling. Such payment shall be made only if the dwelling acquired by TVA was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of such dwelling. The amount of such payment shall be based on the present value of the reasonable cost of the additional amount of interest, including points, if any, on that portion of the amount financed which does not exceed the amount of the unpaid debt for its remaining term at the time of acquisition of the dwelling.

(3) Reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling: *Provided*, That no payment shall be made for prepaid expenses or for any fee

cost, charge, or expense which is determined to be a part of the finance charge under the Truth in Lending Act, Title 1 of Pub. L. 90-321, 82 Stat. 146 (15 U.S.C. 1601), and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System (12 CFR Part 226).

(c) The amount established by § 1306.9 (b)(1) as the differential payment for the replacement housing sets the upper limit of such payment. To qualify for the full amount the displaced person must purchase and occupy a decent, safe, and sanitary dwelling equal to or higher in price than the reasonable cost of a comparable replacement dwelling as established by TVA. If the displaced person on his own voluntarily purchases and occupies a decent, safe, and sanitary dwelling at a price:

(1) Less than the reasonable cost of a comparable replacement dwelling as established by TVA, the differential payment will be reduced to that amount required to pay the difference between the acquisition price of the acquired dwelling and the actual purchase price of the replacement dwelling;

(2) Less than the acquisition price of the acquired dwelling, no differential payment shall be made.

[38 FR 3592, Feb. 8, 1973; 38 FR 16999, June 28, 1973. Redesignated at 44 FR 30682, May 29, 1979]

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.10 was removed, effective April 2, 1989. The removal was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.10 Replacement housing payments to tenants and certain others under section 204 of Pub. L. 91-646.

(a) TVA will make a payment to or for any person displaced from any dwelling who is not eligible to receive a payment under § 1306.9 which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of such dwelling. Tenants and other persons occupying the property shall be so advised when negotiations for the property are initiated with the owner thereof. Such payment shall be either:

(1) The amount computed under § 1306.11 to enable such displaced person to lease or rent for a period not to exceed 4 years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and commercial and public facilities, and reasonably accessible to his place of employment, but not to exceed $4,000; or,

(2) The amount necessary to enable such person to make a downpayment, including incidental expenses described in § 1306.9(b)(3), on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and commercial and public facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000 in making the downpayment.

(b) An owner-occupant otherwise eligible for a payment under § 1306.9 but who rents instead of purchases a replacement dwelling is eligible for replacement housing as a tenant (see §§ 1306.11 and 1306.14).

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.11 was removed, effective April 2, 1989. The removal was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.11 Computation of replacement housing payment for displaced tenants—rental replacement housing payment.

The Chief of TVA's Land Branch may establish the amount necessary to rent a suitable replacement dwelling either by establishing a schedule or by using a comparative method.

(a) *Schedule method.* The payment should be computed by determining the amount necessary to rent a suitable replacement dwelling for 4 years (the average monthly cost from the schedule) and subtracting from such amount 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of negotiations if such rent is reasonable or, if not reasonable, 48 times the monthly economic rent for the dwelling unit. For the purpose of these regulations, economic rent is defined as the amount of rent the displaced tenant would have had to pay for a similar dwelling unit in areas not generally less desirable than the dwelling unit to be acquired. The schedule should be based on a current analysis of the market to determine an amount for each type of dwelling required.

(b) *Comparative method.* The average month's rent may be determined by selecting one or more dwellings representative of the dwelling unit acquired, available on the private market, which meet the definition of a suitable replacement dwelling. The payment should be computed by determining the amount necessary to rent for 4 years a suitable replacement dwelling and subtracting from the amount so determined 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of negotiations if such rent is reasonable or, if not reasonable, 48 times the monthly economic rent for the dwelling unit established by TVA.

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.12 was removed, effec-

tive April 2, 1989. The removal was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.12 Disbursement of rental replacement housing payment.

(a) Rental replacement housing payments will be made to or for eligible displacees. Such payments may be made in a lump sum or installments depending on the term and amount of the lease or rental agreement. Other factors influencing the type or interval of payment are the type of property, the tenant's income, and local custom. Before making rental replacement housing payments determination will be made that the tenant is living in decent, safe, and sanitary housing as defined in § 1306.4.

(b) If an onsite inspection is not practical to verify that the claimant is still occupying decent, safe, and sanitary housing, the claimant may make such verification by written certification to the Chief of TVA's Land Branch or his designated representative.

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.13 was removed, effective April 2, 1989. The removal was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.13 Purchases-replacement housing payment.

(a) If the tenant elects to purchase a replacement dwelling instead of renting, the payment shall be computed by determining the amount necessary to enable him to make a downpayment and to cover incidental expenses on the purchase of replacement housing.

(b) The downpayment shall be the amount necessary to make a downpayment on a suitable replacement dwelling. Determination of the amount "necessary" for such downpayment shall be based on the amount of downpayment that would be required for a conventional loan. The maximum payment may not exceed $4,000, except that if more than $2,000 is required, the tenant must match any amount in excess of $2,000 by an equal amount in making the downpayment.

(c) The full amount of the downpayment must be applied to the purchase price and such downpayment and incidental costs must be shown on the closing statement.

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.14 was removed, effective April 2, 1989. The removal was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.14 Computation of replacement housing payments for certain others.

(a) A displaced owner-occupant eligible under § 1306.9 who elects to rent rather than purchase a replacement dwelling may receive a rental replacement housing payment not to exceed $4,000. The payment shall be computed in the same manner as shown in § 1306.11 with the following additional criteria:

(1) The present rental rate for the acquired dwelling shall be economic rent as determined by market data;

(2) The payment may not exceed the amount which the displaced owner-occupant would have received had he elected to receive a replacement housing payment under § 1306.9; and

(3) The payment shall be deducted from any amount due under § 1306.9 in the event the displaced owner-occupant subsequently purchases replacement housing as defined in § 1306.9 within the prescribed time limit of 1 year.

(b) A displaced owner-occupant who does not qualify for a replacement housing payment under § 1306.9 because of the 180-day occupancy requirement but qualifies under § 1306.10 and elects to rent is eligible for a rental replacement housing payment not to exceed $4,000. The payment shall be computed in the same manner as shown in § 1306.11, except that the present rental rate for the acquired dwelling shall be economic rent as determined by market data.

(c) A displaced owner-occupant who does not qualify for a replacement housing payment under § 1306.9 because of the 180-day occupancy requirement but qualifies under § 1306.10 and elects to purchase a replacement dwelling is eligible for a replacement housing down payment pursuant to § 1306.10(a)(2), which payment shall be computed in the same manner as shown in § 1306.13.

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.15 was removed, effective April 2, 1989. The removal was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.15 Initiation of negotiations.

The term "initiation of negotiations" for real property means the date TVA's offer for the real property to be acquired is presented in writing. When an offer to purchase is presented by mail, the initiation of negotiations will be considered to be the third day after the date of mailing. TVA will advise tenants and other occupants of the date negotiations begin with the owner.

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.16 was removed, effective April 2, 1989. The removal was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.16 Relocation assistance advisory services under section 205 of Pub. L. 91-646.

TVA's Division of Reservoir Properties will establish and maintain a program to provide advice and assistance, where needed, to persons displaced as a result of its acquisition of real property. Such program shall provide pertinent and current information regarding the availability, prices, and rentals of proper replacement properties; offer assistance in obtaining and relocating to such properties; and take such steps required to secure the cooperation of other agencies which may be of assistance in order to minimize hardships and assure that displaced persons receive the maximum assistance available to them. To the extent that the services of a central relocation agency are available to render assistance, such services will be used. In conducting this program, the Division of Reservoir Properties will coordinate its activities with the Division of Agricultural Development, the Division of Navigation Development and Regional Studies, and the Land Branch.

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.17 was removed, effective April 2, 1989. The removal was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.17 Federally assisted programs.

TVA has no programs affording Federal financial assistance within the meaning of Pub. L. 91-646. If any such programs should be instituted, appropriate relocation assistance procedures relating thereto will be adopted.

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.18 was redesignated as § 1306.2, effective April 2, 1989. The redesignation was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.18 Uniform real property acquisition policy.

(a) Before negotiations are initiated for acquisition of real property, the Chief of TVA's Land Branch will cause the property to be appraised and establish an amount believed to be just compensation therefor. The appraiser shall afford the owner or his representative an opportunity to accompany him during his inspection of the property.

(b) When negotiations are initiated to acquire real property, the owner will be given a written statement of, and summary of the basis for, the amount estimated as just compensation. The statement will identify the property and the interest therein to be acquired, including buildings and other improvements to be acquired as a part of the real property, the amount of the estimated just compensation, and the basis therefor. If only a portion of the property is to be acquired, the statement will include a statement of damages and benefits, if any, to the remainder.

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.19 was redesignated as § 1306.3, effective April 2, 1989. The redesignation was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.19 Surrender of possession.

Possession of real property will not be taken until the owner has been paid the agreed purchase price or TVA's estimate of just compensation has been deposited in court in a condemnation proceeding. To the greatest extent practicable, no person will be required to move from property acquired by TVA without at least 90 days' written notice thereof.

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.20 was redesignated as § 1306.4, effective April 2, 1989. The redesignation was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.20 Rent after acquisition.

If TVA rents real property acquired by it to the former owner or former tenant, the amount of rent shall not exceed the fair rental value on a short-term basis.

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.21 was redesignated as § 1306.5, effective April 2, 1989. The redesignation was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.21 Tenants' rights in improvements.

Tenants of real property being acquired by TVA will be paid just compensation for any improvements owned by them, whether or not they might have a right to remove such improvements under the terms of their tenancy. Such payment will be made only upon the condition that all right, title, and interest of the tenant in such improvements shall be transferred to TVA and upon the further condition that the owner of the real property being acquired shall execute a disclaimer of any interest in said improvements.

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.22 was redesignated as § 1306.6, effective April 2, 1989. The redesignation was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.22 Expense of transfer of title and proration of taxes.

In connection with the acquisition of real property by TVA:

(a) TVA will, to the extent it deems fair and reasonable, bear all expenses incidental to the transfer of title to the United States, including penalty costs for the prepayment of any valid preexisting recorded mortgage;

(b) Real property taxes shall be prorated to relieve the seller from paying taxes which are allocable to a period subsequent to vesting of title in the United States or the date of possession, whichever is earlier.

EFFECTIVE DATE NOTE: At 52 FR 48019, Dec. 17, 1987, § 1306.23 was removed, effective April 2, 1989. The removal was confirmed at 54 FR 8912, Mar. 2, 1989.

§ 1306.23 Administrative review.

(a) Determinations by the Chief of TVA's Land Branch as to payments under these regulations shall be final. However, in the event of dissatisfaction by any displaced person the following rights of review will be followed:

(b) Any dispute arising out of or connected in any way with the application of these regulations and Pub. L. 91-646, which is not disposed of by agreement, shall be decided by the Chief of TVA's Land Branch who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the claimant. This decision shall be final and conclusive unless within 30 days from the date of receipt of such copy the displaced person mails or otherwise furnishes a written appeal addressed to the General Manager, Tennessee Valley Authority, Knoxville, Tenn. 37902. In connection with any such appeal proceeding, the claimant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. The decision of the General Manager or his duly authorized representative for the determination of such appeals shall be in writing and furnished to the claimant and shall be final and conclusive.

PART 1307—NONDISCRIMINATION WITH RESPECT TO HANDICAP

Sec.

1307.1 Definitions.
1307.2 Purpose.
1307.3 Application.
1307.4 Program discrimination.
1307.5 Employment discrimination.
1307.6 Program accessibility.
1307.7 Assurances required.
1307.8 Compliance information.
1307.9 Conduct of investigations.
1307.10 Procedure for effecting compliance.
1307.11 Hearings.
1307.12 Decisions and notices.
1307.13 Effect on other regulations; supervision and coordination.

AUTHORITY: TVA Act, 48 State. 58 (1933) as amended, 16 U.S.C. 831-831dd (1976) and sec. 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended, 29 U.S.C. 794 (1976; Supp. II 1978).

SOURCE: 45 FR 22895, Apr. 4, 1980, unless otherwise noted.

§ 1307.1 Definitions.

As used in this part, the following terms have the stated meanings, unless the context otherwise requires:

(a) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended, 29 U.S.C. 794.

(b) "Recipient" means any individual, any State or its political subdivision, or any instrumentality of either, and any public or private agency, institution, organization, or other entity to which financial assistance is extended by TVA directly or through another recipient, including any successor, assignee, or transferee of a recipient as hereinafter set forth, but excluding the ultimate beneficiary of the assistance.

(c) "Financial assistance" means the grant or loan of money; the donation of real or personal property; the sale, lease, or license of real or personal property for a consideration which is nominal or reduced for the purpose of assisting the recipient; the waiver of charges which would normally be made, in order to assist the recipient; the entry into a contract where a purpose is to give financial assistance to the contracting party; and similar transactions.

(d) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(e) "Federal agency" means any department, agency, or instrumentality of the Government of the United States, other than TVA.

(f) "Handicapped person" means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment, as further defined below, except that, as related to employment, the term "handicapped individual" does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current

drug or alcohol abuse, would constitute a direct threat to property or the safety of others:

(1) "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; and drug addiction and alcoholism.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities.

(4) "Is regarded as having such an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities but which is treated by a recipient as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or (iii) does not have a physical or mental impairment as defined in paragraph (f)(1) of this section but is treated by a recipient as having such an impairment.

(g) "Qualified handicapped person" means (1) with respect to employment, a handicapped person (except an alcoholic or drug abuser as defined in paragraph (f) of this section), who, with reasonable accommodation, can perform the essential functions of the job in question and (2) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(h) "Historic property" means an architecturally, historically, or culturally significant property listed in or eligible for listing in the National Register of Historic Places, or a property officially designated as having architectural, historic, or cultural significance under a statute of the appropriate State or local governmental body.

(i) "Building alterations" means those changes to existing conditions and equipment of a building which do not involve any structural changes, but which typically improve and upgrade a building, such as site improvements and alterations to stairways, doors, toilets or elevators.

(j) "Structural changes" shall mean those changes which alter the structure of a building, including but not limited to its load bearing walls and all types of post and beam systems in wood, steel, iron or concrete.

§ 1307.2 Purpose.

The purpose of this part is to effectuate section 504 to the end that no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from TVA.

§ 1307.3 Application.

This part applies to any program in which financial assistance is provided by TVA, except that this part does not apply to any (a) TVA procurement contracts, contracts with other Federal agencies, or contracts of insurance or guaranty, (b) money paid, property transferred, or other assistance extended to a recipient under any program before the effective date of this part, or (c) assistance to any individual or entity which is the ultimate beneficiary under any such program. Nothing in paragraph (b) of this section exempts any recipient of financial assistance under a contract in effect on the effective date of this part from compliance with this part.

§ 1307.4 Program discrimination.

(a) *General.* No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity to which this part applies.

(b) *Specific discriminatory actions.* (1) A recipient under any program to which this part applies shall not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or services available under the program;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others under the program;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others under the program;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others, unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others under the program;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or entity that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards with respect to the program; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment under the program of any right, privilege, advantage, or opportunity enjoyed by others under the program.

(2) A recipient shall not deny a qualified handicapped person the opportunity to participate under the program in activities that are not separate or different, despite the existence of permissibly separate or different activities.

(3) A recipient shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control.

(4) A recipient shall not, in determining the site or location of a facility under the program, make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under the program, or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons. A recipient who wishes to establish a policy of separate programs or different treatment for handicapped and nonhandicapped persons shall request and receive written approval from TVA before instituting such policy or undertaking any such separate treatment.

(e) Recipients shall take appropriate steps to ensure that communications to their applicants, employees, and beneficiaries are available to such persons with impaired vision and hearing.

§ 1307.5 Employment discrimination.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity subject to this part.

(b) *Specific discriminatory actions.* With respect to a program or activity subject to this part, a recipient shall not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) A recipient shall make all decisions concerning employment under any program or activity subject to this part in a manner which ensures that discrimination on the basis of handicap does not occur, including the following activities:

(1) Recruitment, advertising, and processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient shall not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this part, including relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(e) *Reasonable accommodation.* (1) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of the program or activity subject to this part. Reasonable accommodation may include:

(i) Making facilities used by employees readily accessible to and usable by handicapped persons; and

(ii) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, or other similar actions.

(2) In determining whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity under this paragraph factors to be considered include but are not limited to:

(i) The nature and cost of the accommodation needed, and its effect, if any, on the recipient's programs.

(ii) The kind of operation conducted by the recipient, including the composition and structure of the recipient's workforce; and

(iii) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget.

(3) It is not an undue hardship with respect to a qualified handicapped employee or applicant if the sole basis for the claim of hardship is the need to make an accommodation to the physical or mental limitations of the otherwise qualified employee or applicant and the accommodation is deemed by TVA to be reasonable.

(f) *Employment criteria.* A recipient shall not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(g) *Preemployment inquiries.* (1) A recipient shall not conduct a preemployment medical examination or

make a preemployment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except as set out in this paragraph (g).

(2) A recipient may make a preemployment inquiry into an applicant's ability to perform job-related functions.

(3) When a recipient is taking remedial action to correct the effects of past discrimination, taking voluntary action to overcome the effects of conditions that resulted in limited participation in its TVA-assisted program or activity or is taking affirmative action pursuant to section 503 of the Rehabilitation Act of 1973, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped: *Provided*, That the recipient states clearly on any written questionnaire used for this purpose, or makes clear orally if no written questionnaire is so used, that:

(i) The information requested is intended for use solely in connection with such remedial, voluntary or affirmative action efforts;

(ii) The information is being requested on a voluntary basis and it will be kept confidential as provided in paragraph (g)(4) of this section;

(iii) Refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(iv) The information will be used only in accordance with this part.

(4) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty: *Provided*, That:

(i) All entering employees are subjected to such an examination regardless of handicap; and

(ii) The results of such an examination are used only in accordance with the requirements of this part.

(5) Information obtained in accordance with this section as to the medical condition or history of an employee or applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(i) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(ii) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(iii) TVA officials investigating compliance with section 504 shall be provided information which they deem relevant upon request.

§ 1307.6 Program accessibility.

(a) *General.* No qualified handicapped person shall, because facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program subject to this part.

(b) *Existing facilities.* (1) Each program subject to this part shall be operated so that, viewed in its entirety, it is readily accessible to and usable by qualified handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons. A recipient is not required to make building alterations or structural changes if other methods are effective in achieving program accessibility. Such compliance methods may include (subject to the provisions of §§ 1307.4 and 1307.5), reassigning programs or activities to accessible locations within a facility; providing assistance to handicapped persons into or through an otherwise inaccessible facility; delivering programs or activities at other alternative sites which are accessible and are operated or available for use by the recipient; or other methods which comply with the intent of this paragraph.

(2) This paragraph governs the timing of development of transition plans and the completion of necessary building alterations and structural changes to existing facilities, including historic property covered by paragraph (c) of this section. If building alterations or structural changes will be necessary to make covered programs

or activities in existing facilities of a recipient accessible, the recipient shall develop a transition plan setting forth the steps necessary to complete the alterations or changes in accordance with such standards as TVA may specify in the contract or agreement, and shall have the plan approved by TVA. If the financial assistance from TVA is expected to last for less than three years, the contract or agreement shall specify the date by which the transition plan shall be developed and approved. If the financial assistance from TVA is expected to last for at least three years, the transition plan shall be developed and submitted to TVA within six months from the effective date of the contract or agreement, subject to extension by TVA for an additional six month period, for good cause shown to it. A transition plan shall:

(i) Be developed with the assistance of interested persons or organizations representing handicapped persons;

(ii) Be available for public inspection after approval by TVA (or at any earlier time required by state or local law applicable to the recipient);

(iii) Identify the official responsible for implementation of the approved plan; and

(iv) Specify the date by which the required alterations or changes shall be completed, which shall be as soon as practicable and in no event later than three years after the effective date that financial assistance is extended by TVA.

(3) Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(c) *Historic property.* If a recipient's program or activity uses an existing facility which is an historic property, the recipient shall endeavor to assure compliance with paragraph (b)(1) of this section by compliance methods which do not alter the historic character or architectural integrity of the historic property. The recipient must determine that program accessibility cannot be accomplished by such alternative methods before considering building alterations as a compliance method. To the maximum extent possible any building alterations determined to be necessary shall be undertaken so as not to alter or destroy architecturally significant elements or features. A recipient may determine that structural changes are necessary to accomplish program accessibility only if the recipient has determined that accessibility cannot feasibly be accomplished by any of the other foregoing methods. To the maximum extent possible, any structural changes determined to be necessary shall be undertaken so as not to alter or destroy architecturally significant elements or features.

(d) *New construction.* (1) New facilities required under a program subject to this part shall be designed and constructed to be readily accessible to and usable by handicapped persons.

(2) Effective as of November 4, 1988, design, construction, or alteration of buildings in conformance with Sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (41 CFR Subpart 101-19.6 app. A) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(3) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of physically handicapped persons.

(4) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[45 FR 22895, Apr. 4, 1980, as amended at 53 FR 39083, Oct. 5, 1988]

§ 1307.7 Assurances required.

(a) TVA contributes financial assistance only under agreements which contain a provision which specifically

requires compliance with this part and compliance with such standards for construction and alteration of facilities as TVA may provide. If the financial assistance involves the furnishing of real property, the agreement shall obligate the recipient, or the transferee in the case of a subsequent transfer, for the period during which the real property is used for a purpose for which the financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where the financial assistance involves the furnishing of personal property, the agreement shall obligate the recipient during the period for which ownership or possession of the property is retained. In all other cases the agreement shall obligate the recipient for the period during which financial assistance is extended pursuant to the agreement. TVA shall specify the form of the foregoing agreement, and the extent to which an agreement shall be applicable to subcontractors, transferees, successors in interest, and other participants in the program.

(b) In the case of real property, structures or improvements thereon, or interests therein, acquired through a program of TVA financial assistance, or in the case where financial assistance was provided in the form of a transfer by TVA of real property or interest therein, the instrument effecting or recording the transfer of title shall contain a convenant running with the land assuring compliance with this part and the guidelines contained herein for the period during which the real property is used for a purpose for which the TVA financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of TVA financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained by transfer from TVA, the covenant against discrimination may also include a condition coupled with a right to be reserved by TVA to revert title to the property in the event of a breach of the covenant where, in the discretion of TVA, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event, if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, TVA may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as it deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 1307.8 Compliance information.

(a) *Cooperation and assistance.* TVA shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to TVA timely, complete and accurate compliance reports at such times, and in such form and containing such information, as TVA may determine to be necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by TVA during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as TVA may require to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish

this information, the recipient shall so certify in its report and set forth the efforts it has made to obtain the information.

(d) *Information to employees, beneficiaries and participants.* Each recipient shall make available to employees, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives financial assistance, and shall make such information available to them in such manner, as TVA finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§ 1307.9 Conduct of investigations.

(a) *Periodic compliance reviews.* TVA shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any individual who claims (individually or on behalf of any specific class of individuals) to have been subjected to discrimination prohibited by this part may, personally or by a representative, file with TVA a written complaint. A complaint must be filed not later than ninety (90) days from the date of the alleged discrimination, unless the time for filing is extended by TVA.

(c) *Investigations.* TVA will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation shall include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, TVA will so inform the recipient and the matter will be resolved by informal means whenever possible. If TVA determines that the matter cannot be resolved by informal means, action will be taken as provided for in § 1307.10.

(2) If an investigation does not warrant action pursuant to paragraph (d) (1) of this section, TVA will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 504 or this part, or because the individual had made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 1307.10 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue financial assistance or by any other means authorized by law. Such other means may include, but are not to be limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, (2) institution of appropriate proceedings by TVA to enforce the provisions of the agreement of financial assistance or of any deed or instrument relating thereto, and (3) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1307.7.* If any entity requesting financial assistance from TVA declines to furnish the assurance required under § 1307.7, or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, financial assistance may be refused in accordance

with the procedures of paragraph (c) of this section; and for such purposes, the term "recipient" includes one who has been denied financial assistance. TVA shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that TVA shall continue assistance during the pendency of such proceedings where such assistance was due and payable pursuant to an agreement therefor entered into with TVA prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue financial assistance.* No order suspending, terminating or refusing to grant or continue financial assistance shall become effective until (1) TVA has advised the recipient of the failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the recipient to comply with a requirement imposed by or pursuant to this part, including any act of discrimination on the basis of handicap in violation of this part, and (3) the action has been approved by the TVA Board pursuant to § 1307.12. Any action to suspend or terminate or to refuse to grant or to continue financial assistance shall be limited to the particular recipient as to whom such a finding had been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance had been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) TVA has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least ten (10) days from the mailing of such notice to the recipient or other person. During this period of at least ten (10) days additional efforts will be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 1307.11 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1307.10, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected recipient. This notice shall advise the recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and shall either (1) fix a date not less than twenty (20) days after the date of such notice within which the recipient may request of TVA that the matter be scheduled for hearing or (2) advise the recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. A recipient may waive a hearing and submit written information and argument for the record. The failure of a recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing and a consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the time and place fixed by TVA unless it determines that the convenience of the recipient requires that another place be selected. Hearings shall be held before the TVA Board or before a "hearing officer" who shall be either a member of the TVA Board or, at the discretion of the Board, a person designated by the Board who shall not be employed in or under the TVA division through or under which the financial assistance has been extended by TVA to the recipient involved in the hearing.

(c) *Right to counsel.* In all proceedings under this section, the recipient and TVA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in accordance with such

rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both TVA and the recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence will not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. That officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal agencies issued under section 504, the TVA Board may, by agreement with such other agency, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 1307.12.

§ 1307.12 Decisions and notices.

(a) *Decision by a member of the TVA Board or a hearing officer.* If the hearing is held before a "hearing officer" as defined in § 1307.11(b), that hearing officer shall either make an initial decision, if so authorized, or certify the entire record including recommended findings and proposed decision to the TVA Board for a final decision. A copy of such initial decision or certification shall be mailed to the recipient. Where the initial decision is made by a hearing officer, the recipient may file with the TVA Board exceptions to the initial decision, which shall include a statement of reasons therefor. Such exceptions shall be filed within thirty (30) days of the mailing of the notice of initial decision. In the absence of exceptions, the TVA Board may on its own motion within forty-five (45) days after the initial decision serve on the recipient a notice that it will review the decision. Upon the filing of such exceptions or of such notice of review, the TVA Board shall review the initial decision and issue its own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review, the initial decision shall constitute the final decision of the TVA Board.

(b) *Decisions on record or review by the TVA Board.* Whenever a record is certified to the TVA Board for decision or it reviews the decision of a hearing officer pursuant to paragraph (a) of this section, or whenever the TVA Board conducts the hearing, the recipient shall be given reasonable opportunity to file with the Board briefs or other written statements of its contentions, and a copy of the final decision of the Board shall be given in writing to the recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived, a decision shall be made by the TVA Board on the record and a copy of such decision shall be given to the recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the recipient has failed to comply.

(e) *Approval by TVA Board.* Any final decision (other than a decision by the TVA Board) which provides for the suspension or termination of, or the refusal to grant or continue financial assistance, or the imposition of any other sanction available under this part or section 504 shall promptly be transmitted to the TVA Board which may approve such decision, vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of section 504 and this part, including provisions designed to assure that no financial assistance will thereafter be extended under such program to the recipient determined by such decision to have failed to comply with this part, unless and until it corrects its noncompliance and satisfies TVA that it will fully comply with this part.

(g) *Posttermination proceedings.* (1) A recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive financial assistance upon satisfaction of the terms and conditions for such eligibility contained in that order, or if the recipient otherwise comes into compliance with this part and provides reasonable assurance of future full compliance with this part.

(2) Any recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request that TVA fully restore the recipient's eligibility to receive financial assistance. Any such request shall be supported by information showing that the recipient has met the requirements of paragraph (g)(1) of this section. If TVA determines that those requirements have been satisfied, it shall restore such eligibility.

(3) If TVA denies any such request, the recipient may submit a request for a hearing in writing, specifying its reasons for believing TVA to have been in error. The recipient shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by TVA. The recipient, upon proving at such a hearing that the requirements of paragraph (g)(1) of this section are satisfied, will be restored to such eligibility. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 1307.13 Effect on other regulations; supervision and coordination.

(a) *Effect on other regulations.* Nothing in this part shall be deemed to supersede or affect any of the following (including future amendments thereof): (1) Regulations by TVA and other Federal agencies issued with respect to section 503 of the Rehabilitation Act of 1973, or (2) any other regulations or instructions, insofar as they prohibit discrimination on the ground of handicap in any program or situation to which this part is inapplicable, or which prohibit discrimination on any other ground.

(b) *Supervison and coordination.* TVA may from time to time assign to officials of other Federal agencies, with the consent of such agencies, responsibilities in connection with the effectuation of the purposes of section 504 and this part (other than responsibility for final decision as provided in § 1307.12), including the achievement of effective coordination and maximum uniformity within the Executive Branch of the government in the application of section 504 and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another federal agency acting pursuant to an assignment of responsibility under this part shall have the same effect as though such action had been taken by TVA.

PART 1308—CONTRACT DISPUTES

Subpart A—General Matters

Sec.

1308.1 Purpose and organization.
1308.2 Definitions.
1308.3 Exclusions.

Sec.
1308.4 Coverage of certain excluded Contractors.
1308.5 Interest.
1308.6 Fraudulent claims.
1308.7 Effective date.

Subpart B—Contracting Officers

1308.11 Contractor's request for relief.
1308.12 Submission and decision of Contractor's claim.
1308.13 Time limits for decisions.
1308.14 Requests for relief by TVA.
1308.15 Finality of decisions.
1308.16 Decisions involving fraudulent claims.
1308.17 Failure to render timely decision.

Subpart C—Board of Contract Appeals

1308.21 Jurisdiction and organization.
1308.22 Representation.
1308.23 Finality of decisions.
1308.24 Undue delay in Contracting Officer's decision.
1308.25 Stay of appeal for Contracting Officer's decision.
1308.26 Appeals.
1308.27 Appeal files.

Subpart D—Prehearing and Hearing Procedures

1308.31 Filing and service.
1308.32 Prehearing procedures.
1308.33 Hearings.
1308.34 Record on appeal.
1308.35 Small claims procedure.
1308.36 Accelerated appeal procedure.
1308.37 Decisions.
1308.38 Reconsideration.
1308.39 Briefs and motions.

Subpart E—Subpoenas

1308.51 Form.
1308.52 Issuance.
1308.53 Service.
1308.54 Requests to quash or modify.
1308.55 Penalties.

AUTHORITY: Tennessee Valley Authority Act of 1933, as amended, 16 U.S.C. 831-831dd; Contract Disputes Act of 1978, 92 Stat. 2383-2391.

SOURCE: 44 FR 29648, May 22, 1979, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

Subpart A—General Matters

§ 1308.1 Purpose and organization.

The regulations in this part implement the Contract Disputes Act of 1978 as it relates to TVA. This part consists of 5 subparts. Subpart A deals with matters applicable throughout the part, incuding definitions. Subpart B deals with Contracting Officers' decisions. Subpart C deals with general matters concerning the TVA Board of Contract Appeals. Subpart D deals with hearing and prehearing procedures, including discovery. Subpart E deals with subpoenas.

§ 1308.2 Definitions.

For the purposes of this part, unless otherwise provided:

(a) The term "Act" means the Contract Disputes Act of 1978, 92 Stat. 2383-91.

(b) The term "Board" means the TVA Board of Contract Appeals.

(c) The term "claim" means a written demand by a Contractor, in compliance with this paragraph, for a decision by a Contracting Officer under a disputes clause. A claim must:

(1) State the amount of monetary relief, or the kind of nonmonetary relief, sought, and identify the contract provision relied upon;

(2) Include sufficient supporting data to permit the Contracting Officer to decide the claim, or provide appropriate reference to previously submitted data;

(3) If monetary relief totalling more than $50,000 is involved, include a signed certification by the Contractor that the claim is made in good faith, that the supporting data are accurate and complete to the best of the Contractor's knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the Contractor believes TVA is liable;

(4) Be signed by the Contractor, or on its behalf if the Contractor is other than an individual. If signed on a Contractor's behalf, the claim must include evidence of the authority of the individual so signing it, and of the individual signing any certification required by this paragraph, unless such authority appears in the contract or contract file.

The Contracting Officer has no authority to waive any of the requirements of this paragraph.

30-050 O—89——8

(d) The term "contract" means an agreement in writing entered into by TVA for:

(1) The procurement of property, other than real property in being;

(2) The procurement of nonpersonal services;

(3) The procurement of construction, alteration, repair or maintenance of real property; or

(4) The disposal of personal property. The term "contract" does not include any TVA contract for the sale of fertilizer or electric power, or any TVA contract related to the conduct or operation of the electric power system.

(e) The term "Contracting Officer" means TVA's Director of Purchasing, or duly authorized representative acting within the limits of the representative's authority. The TVA Purchasing Agent who administers a contract for TVA is designated as the duly authorized representative of the Director of Purchasing to act as Contracting Officer for all purposes in the administration of the contract (including, without limitation, decision of claims under the disputes clause). Such a designation continues until it is revoked or modified by written notice to the Contractor and the Purchasing Agent from TVA's Director of Purchasing.

(f) The term "Contractor" means a party to a TVA contract which contains a disputes clause. The term "Contractor" does not include TVA.

(g) The term "disputes clause" means a clause in a TVA contract requiring that a contract dispute be resolved through a TVA-conducted administrative process. It does not include, for example, arbitration provisions, or provisions specifying an independent third party to decide certain kinds of matters or special mechanisms to establish prices or price adjustments in contracts.

(h) The term "Hearing Officer" means a member of the Board who has been designated to hear and determine a particular matter pending before the Board.

(i) The term "TVA" means the Tennessee Valley Authority.

(j) A term defined s in a contract subject to this part shall have the meaning given it in the contract.

§ 1308.3 Exclusions.

(a) This part does not apply to any TVA contract which does not contain a disputes clause.

(b) Except as otherwise specifically provided, this part does not apply to any TVA contract entered into prior to March 1, 1979, or to any dispute relating to such a contract.

§ 1308.4 Coverage of certain excluded Contractors.

(a) A Contractor whose contract is excluded from this part under § 1308.3(b) may elect to proceed under this part and the Act with respect to any dispute pending before a Contracting Officer on March 1, 1979, or initiated thereafter. If the disputes clause in the contract is not an "all disputes" clause (*see Patton Wrecking & Dem. Co.* v. *Tennessee Valley Authority*, 465 F.2d 1073 (5th Cir. 1972)), a Contractor's election under this section shall cause the provisions of the first two sentences of section 6(a) of the Act to apply to the contract, and such an election shall be irrevocable.

(b) A Contractor makes an election under paragraph (a) of this section by giving written notice to the Contracting Officer stating that the Contractor elects to proceed with the dispute under the Act. For disputes pending on March 1, 1979, the notice shall be actually received by the Contracting Officer within 30 days after the Contractor receives the Contracting Officer's decision. For disputes initiated thereafter, the notice shall be included in the document first requesting a decision by the Contracting Officer.

§ 1308.5 Interest.

TVA shall pay a Contractor interest on the amount found to be due on a claim:

(a) From the date payment is due under the contract or the Contracting Officer receives the claim, whichever is later, until TVA makes payment;

(b) At the rate payable pursuant to section 12 of the Act on the date from which interest runs pursuant to paragraph (a) of this section.

§ 1308.6 Fraudulent claims.

(a) If a Contractor is unable to support any part of a claim and it is determined that such inability is attributable to the Contractor's misrepresentation of fact or fraud, the Contractor shall be liable to TVA, as set out in section 5 of the Act, for:

(1) An amount equal to the unsupported part of the claim; plus

(2) All TVA's costs attributable to reviewing that part of the claim.

(b) The term "misrepresentation of fact" has the meaning given it in section 2(7) of the Act.

(c) Prior to TVA's filing suit for amounts due under this section, TVA shall provide the Contractor with a copy of any opinion under § 1308.16 or § 1308.37(b), and shall request the Contractor to pay voluntarily the amount TVA asserts is due to it.

(d) A determination by TVA that fraud or misrepresentation of the fact has been committed is not subject to decision under a disputes clause.

(e) The provisions of this section are in addition to whatever penalties or remedies may otherwise be provided by law.

§ 1308.7 Effective date.

Subject to § 1308.3(a), this part applies to any TVA contract having an effective date on or after March 1, 1979.

Subpart B—Contracting Officers

§ 1308.11 Contractor's request for relief.

Any request for relief which a Contractor believes is due under a contract shall be submitted to the Contracting Officer in writing, in accordance with the terms of the contract, including applicable time limits.

§ 1308.12 Submission and decision of Contractor's claim.

(a) If Contractor and TVA are unable to resolve Contractor's request for relief by agreement within a reasonable time, Contractor may submit a claim to the Contracting Officer.

(b) The Contracting Officer shall issue a decision to the Contractor on a submitted claim in conformity with the contract's disputes clause. Specific findings of fact are not required, but may be made. Such findings are not binding in any subsequent proceeding except as provided in § 1308.15. The decision shall:

(1) Be in writing;

(2) State the reasons for the decision reached;

(3) Include information about the Contractor's rights of appeal under sections 7 and 10 of the Act (including time limits); and

(4) Notify the Contractor, as appropriate, of the special procedures available under §§ 1308.35 and 1308.36 at the Contractor's election. A copy of the provisions of this part shall be furnished with the decision.

§ 1308.13 Time limits for decisions.

(a) If a submitted claim involves $50,000 or less, the Contracting Officer shall issue the decision within 60 days from actual receipt of the claim. If a submitted claim involves more than $50,000, the Contracting Officer within 60 days from actual receipt shall either issue a decision or notify the Contractor of the date by which a decision shall be rendered, which shall be within a reasonable time. The Contracting Officer shall not be deemed to be in "actual receipt" of a claim until the claim meets all requirements of § 1308.2(c).

(b) The Contracting Officer shall issue a decision within any time limits set by an order under § 1308.24. If a Hearing Officer grants a stay of an appeal pursuant to § 1308.25, the Contracting Officer shall issue a decision within any time limits specified by the stay order, or within a reasonable time after receipt of the stay, if it sets no time limits.

(c) As used in this subpart, the reasonableness of a time period depends on the amount or kind of relief involved and complexity of the issues raised, the adequacy of the Contractor's supporting data, contractual requirements for auditing of Contractor's cost or other data, and other relevant factors.

§ 1308.14 Request for relief by TVA.

When TVA believes it is due relief under a contract, the Contracting Of-

ficer shall make a request for relief against the Contractor, and shall attempt to resolve the request by agreement. If agreement cannot be reached within a reasonable time, the Contracting Officer shall issue a decision which complies with the requirements of § 1308.12(b).

§ 1308.15 Finality of decisions.

A decision by a Contracting Officer under the disputes clause of a contract subject to this part is final and conclusive and not subject to review by any forum, tribunal, or Government agency unless an appeal or suit is timely commenced under this part or section 10(a)(2) and (3) of the Act.

§ 1308.16 Decisions involving fraudulent claims.

If a Contracting Officer denies any part of a Contractor's claim for lack of support, and the Contracting Officer is of the opinion that the Contractor's inability to support that part of the claim is within § 1308.6 and section 5 of the Act, the Contracting Officer's decision shall not state that opinion, but, contemporaneously with the decision, the Contracting Officer shall separately notify TVA's General Counsel of that opinion and the reasons therefor.

§ 1308.17 Failure to render timely decision.

Any failure by Contracting Officer to issue a decision on a submitted claim within the period required or permitted by § 1308.13, will be deemed to be a decision by the Contracting Officer denying the claim and will authorize the commencement of an appeal or the claim under this part, or a suit on the claim as provided in section 10(a)(2) of the Act. If no appeal or suit pursuant to this section has been commenced at the time the Contracting Officer issues a decision, the right to sue or appeal and the time limits therefor shall be determined as otherwise provided in this part and the Act, and this section shall not authorize an appeal or suit from the decision.

Subpart C—Board of Contract Appeals

§ 1308.21 Jurisdiction and organization.

(a) The Board shall consider and determine timely appeals filed by Contractors from decisions of TVA Contracting Officers pursuant to a disputes clause.

(b) The Board shall consist of an indeterminate number of members, who shall serve on a part-time basis. The members of the Board shall all be attorneys at law duly licensed by any state, commonwealth, territory, or the District of Columbia. One of the members of the Board shall be designated as "Chairman" pursuant to section 8(b)(2) of the Act.

(c) Each appeal or other matter before the Board shall normally be assigned to a single Hearing Officer, to be designated by the Chairman. The Chairman may act as a Hearing Officer, and shall notify the Contractor and TVA of the name and mailing address of the person designated as Hearing Officer.

(d) If a member to whom an appeal has been assigned cannot perform in a timely manner the duties of Hearing Officer, because of unavailability or incapacity which would in the Chairman's judgment affect the expeditious and timely resolution of the appeal, or for any other reason deemed sufficient by the Chairman, the Chairman may take any action deemed appropriate to effectuate the disposition of the appeal and the rights of the parties under this part. The kind of action taken, and the manner thereof, shall be within the discretion of the Chairman, and may include, but is not limited to, action on pending motions, discovery, issuance of or ruling on objections to subpoenas, and reassignment of an appeal in whole or in part.

§ 1308.22 Representation.

(a) In any appeal to the Board, a Contractor may be represented by an attorney at law duly licensed by any state, commonwealth, territory, or the District of Columbia. A Contractor not an individual and not wishing to appear by an attorney may be represented by any member, partner, or of-

ficer duly authorized to act on Contractor's behalf, or if an individual, may appear personally.

(b) TVA shall be represented by attorneys from its Office of General Counsel.

§ 1308.23 Finality of decisions.

A decision by a Hearing Officer or an appeal shall be the decision of the Board and shall be final, subject only to amendment under § 1308.37(c), reconsideration under § 1308.38 or appeal pursuant to sections 8(g)(2) and 10(b) of the Act.

§ 1308.24 Undue delay in Contracting Officer's decision.

(a) If there is an undue delay by a Contracting Officer in issuing a decision on a claim, the Contractor may request the Chairman to direct the Contracting Officer to issue a decision within a specified period of time.

(b) A request under this section shall:

(1) Be in writing;

(2) State the date on which the claim was submitted to the Contracting Officer.

(3) State the date suggested for issuance of a decision by the Contracting Officer.

(c) TVA may reply to a motion under this section within 5 days after its receipt.

(d) The Chairman shall issue a written decision on the request. If granted, the decision shall specify the date by which the Contracting Officer's decision is to be rendered, and a copy shall be served on the Contracting Officer.

§ 1308.25 Stay of appeal for Contracting Officer's decision.

If an appeal has been taken because of a Contracting Officer's failure to render a timely decision, as provided by § 1308.17, the Hearing Officer, with or without a motion by a party, may stay proceedings on the appeal in order to obtain a decision on the matter appealed. Oral argument will not be heard on such a motion unless otherwise directed. The stay order will normally set a date certain by which the decision of the Contracting Officer will be rendered. Such date shall take into account the factors mentioned in § 1308.13(c), the length of time the matter has already been pending before the Contracting Officer, and the need for prompt and expeditious action on appeals.

§ 1308.26 Appeals.

(a) An appeal to the Board from a Contracting Officer's decision under § 1308.12 shall be initiated within 90 days from the Contractor's receipt of the Contracting Officer's decision and in the manner set forth in the disputes clause.

(b) An appeal from the Contracting Officer's failure to render a timely decison shall be taken within the time period provided by § 1308.17. The notice of appeal shall be in the form and filed in the manner specified in the disputes clause, but shall state that it is an appeal under § 1308.17, and shall include a copy of the claim which was submitted for decision.

§ 1308.27 Appeal files.

(a) Notices of appeal shall be filed as provided in the disputes clause, and shall be promptly transmitted by TVA to the Chairman.

(b) Following transmittal of the notice of appeal, TVA shall assemble and transmit to the Hearing Officer and the Contractor an appeal file consisting of:

(1) The Contracting Officer's decision, if any, from which the appeal is taken;

(2) The contract and pertinent amendments, specifications, plans, and drawings (a list of the documents submitted may be provided Contractor in lieu of copies);

(3) The claim;

(4) Any other matter pertinent to the appeal submitted to or considered by the Contracting Officer for reaching a decision.

(c) The appeal file shall be submitted within 30 days. Within 30 days after receipt of a copy, the Contractor may submit to the Hearing Officer and TVA's General Counsel any documents within the scope of paragraph (b) of this section which are not included in the appeal file but which the Contractor believes are pertinent to

the appeal. Such documents are considered a part of the appeal file.

Subpart D—Prehearing and Hearing Procedures

§ 1308.31 Filing and service.

(a) All documents required to be served shall be served on TVA and Contractor and filed with the Board, except subpoenas.

(b) A request under § 1308.15 shall be directed to the General Manager, Tennessee Valley Authority, 400 Commerce Avenue, Knoxville, Tennessee 37902, and shall be transmitted to the Chairman.

(c) All other documents required to be filed shall be directed to the Hearing Officer assigned to the matter.

(d) Service on the opposing party may be made personally or by mail. The copy presented for filing shall bear an appropriate certificate or acknowledgment of service.

§ 1308.32 Prehearing procedures.

(a) Unless otherwise provided in this part, prehearing procedures, including discovery, shall be conducted in accordance with Rules 6, 7(b), 16, 26, 28-37, and 56 of the Federal Rules of Civil Procedure, except that the Hearing Officer may modify those Rules to meet the needs of the parties in a particular case.

(b) The term "court" as used in those Rules shall be deemed to mean "Hearing Officer"; the term "plaintiff" shall be deemed to mean "Contractor"; the term "defendant" shall be deemed to mean "TVA"; and the term "action" shall be deemed to mean the pending appeal.

(c) Discovery subpoenas are subject to Subpart E.

(d) The party giving notice of a deposition is responsible for securing a reporter.

(e) No appeal of counterclaim may be dismissed except by order of the Hearing Officer. The Hearing Officer may order at any time, with or without a motion by a party, that an appeal or counterclaim, or any part thereof, be dismissed because the matter has been settled, because the party no longer desires to pursue the matter, or because of the party's failure to prosecute the matter or to comply with the regulations in this part or with any order of the Hearing Officer. Any dismissal under this paragraph operates as an adjudication on the merits of the matter which is dismissed, and is a decision within the meaning of § 1308.23, but does not affect the Hearing Officer's jurisdiction over any matter not so dismissed.

[44 FR 29648, May 22, 1979. Redesignated at 44 FR 30682, May 29, 1979, and amended at 49 FR 3845, Jan. 31, 1984]

§ 1308.33 Hearings.

(a) TVA shall arrange for the verbatim reporting of evidentiary hearings before the Hearing Officer, and shall provide the Hearing Officer with the original transcript. The parties shall make their own arrangements with the reporter for copies.

(b) Admissibility of evidence shall generally be governed by the Federal Rules of Evidence, subject, however, to the Hearing Officer's discretion. As used in those Rules, the term "court" shall be deemed to mean "Hearing Officer."

(c)(1) Conduct of hearings shall generally be governed by Rules 42-44, 44.1, and 46 of the Federal Rules of Civil Procedure, except that the Hearing Officer may modify those Rules to meet the needs of the parties in a particular case. The terms "court," "plaintiff," "defendant," and "action" as used in those Rules shall be deemed to have the meaning given them in § 1308.32.

(2) After the Contractor has completed the presentation of his evidence, TVA, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the Contractor has shown no right to relief. The Hearing Officer as the trier of the facts may then determine them and render a decision against the Contractor, or take the matter under advisement, or decline to render any decision until the close of all the evidence. Any decision rendered under this paragraph shall conform to § 1308.37, and is a decision within the meaning of § 1308.23.

(d) Hearings shall be as informal as may be reasonable and appropriate under the circumstances, and shall be held at a time and place to be specified by the Hearing Officer.

(e) Evidentiary subpoenas are subject to Subpart E of this part.

[44 FR 29648, May 22, 1979. Redesignated at 44 FR 30682, May 29, 1979, and amended at 49 FR 3845, Jan. 31, 1984]

§ 1308.34 Record on appeal.

Except as otherwise provided in this part, the appeal shall be decided on the basis of the record on appeal, which consists of the notice of appeal, the claim, any notice of election under § 1308.35 or § 1308.36, orders entered during the proceeding, admissions, transcripts of hearings, hearing exhibits and stipulations on file, all other documents admitted in evidence, and all briefs submitted by the parties.

§ 1308.35 Small claims procedure.

(a) The Contractor may elect to have the appeal processed under this section, if the amount in dispute is $10,000 or less. This amount shall be determined by totalling the amounts claimed by TVA and Contractor.

(b) Appeals under this section shall be decided, whenever possible, within 120 days after the Hearing Officer receives written notice that the Contractor has elected to proceed under this section. Such election may be made a part of the notice of appeal.

(c) An appeal under this section shall be determined on the basis of the record on appeal and those documents in the appeal file identified in § 1308.27(b)(1), (2), and (3). Other documents may be considered in the determination of the appeal as may be stipulated to by the parties, or as the Hearing Officer may order on motion by a party. No evidentiary hearing shall be held unless the Hearing Officer directs testimony on a particular issue. Discovery and other prehearing procedures may be conducted under such time periods as the Hearing Officer may set to meet the 120-day period, and the Hearing Officer may reserve up to 30 days to prepare a decision. Upon request by either party, the Hearing Officer shall hear oral argument after the record is closed, and may direct oral argument on specified issues if the parties do not request it.

(d) The Hearing Officer's decision under this section will be short and contain only summary findings of fact and conclusions of law. The decision may, at the Hearing Officer's discretion, be rendered orally at the conclusion of any oral argument held. In such case, the Hearing Officer will promptly furnish the parties a typed copy of the decision, which shall constitute the final decision.

(e) Decisions under this section shall be final and conclusive except for fraud, and shall have no value as precedent for future appeals.

§ 1308.36 Accelerated appeal procedure.

(a) The Contractor may elect to have the appeal processed under this section if the amount in dispute is $50,000 or less. The amount shall be determined by totalling the amounts claimed by TVA and Contractor.

(b) Appeals under this section shall be decided, whenever possible, within 180 days after the Hearing Officer receives written notice that the Contractor has elected to proceed under this section. Such election may be made a part of the notice of appeal.

(c) In cases under this section, the parties are encouraged to limit discovery and briefing, consistent with adequate presentation of their positions. The Hearing Officer may shorten applicable time periods in order to meet the 180-day period, and may reserve 30 days to prepare a decision.

(d) The Hearing Officer's decision under this section will be short and may contain only summary findings of fact and conclusions of law. The decision may, at the Hearing Officer's election, be rendered orally at the conclusion of the evidentiary hearing, following such oral argument as may be permitted. In such case, the Hearing Officer will promptly furnish the parties a typed copy of the decision, which shall constitute the final decision.

§ 1308.37 Decisions.

(a) The Hearing Officer's decision shall be in writing. Except as provided by § 1308.35 or 1308.36, the decision

shall contain complete findings of fact and conclusions of law. The parties may be directed to submit proposed findings and conclusions. A decision against a Contractor on a claim shall include notice of the Contractor's rights under paragraphs (2) and (3) of section 10(a) of the Act.

(b) If the decision denies any part of a Contractor's claim for lack of support and the Hearing Officer is of the opinion that the Contractor's inability to support that part is within § 1308.6 and section 5 of the Act, the decision shall not state that opinion, but contemporaneously with the decision the Hearing Officer shall separately notify TVA's General Counsel of that opinion and the reasons therefor.

(c) Not later than 10 days after receipt of the decision, a party may move to alter or amend the findings or make additional findings and amend the conclusions and decision accordingly. Such a motion may be combined with a motion under § 1308.38. This time period cannot be extended.

§ 1308.38 Reconsideration.

Motions for reconsideration shall be served not later than 10 days after issuance of the Hearing Officer's decision. This time period cannot be extended. Such a motion shall be heard and decided in the manner provided by Rule 59 of the Federal Rules of Civil Procedure for motions for new trial in actions tried without a jury.

§ 1308.39 Briefs and motions.

(a) All motions shall be accompanied by a brief or memorandum setting forth supporting authorities. Briefs in opposition to a motion shall be served within 10 days after receipt of the motion, unless otherwise specified in this part, or by order of the Hearing Officer.

(b) The Hearing Officer shall set the schedule for service of prehearing and posthearing briefs on the merits.

(c) A motion to dismiss an appeal for lack of jurisdiction should be served seasonably, but may be served at any time. The issue of lack of jurisdiction may be raised by the Hearing Officer sua sponte, in which case the Hearing Officer shall set a briefing schedule on the issue in the document raising it to the parties.

(d) A motion for summary judgment may be made at any time after the appeal file has been transmitted under § 1308.26.

Subpart E—Subpoenas

§ 1308.51 Form.

(a) A subpoena shall state the name of the Board and the title of the appeal; shall command the person to whom it is directed to attend and give testimony at a deposition or hearing, as appropriate, and, if appropriate, to produce specified books, papers, documents, or tangible things at a time and place therein specified; and shall notify the person of the right to request that the subpoena be quashed or modified and of the penalties for contumacy or failure to obey.

§ 1308.52 Issuance.

(a) A deposition subpoena shall not issue except upon the filing of a notice of deposition of the person to be subpoenaed, which notice should normally be filed at least 15 days in advance of the scheduled deposition.

(b) A subpoena for the attendance of a witness at an evidentiary hearing shall not issue except upon the filing of a request for appearance at the hearing of the person to be subpoenaed, which request should normally be filed at least 30 days in advance of the scheduled hearing. The request should state:

(1) The name and address of the witness;

(2) The general scope of the witness' testimony;

(3) The books, records, papers, and other tangible things sought to be produced; and

(4) The general relevance of the matters sought to the case.

(c) Upon receipt of a notice of deposition or request for appearance at a hearing, the Hearing Officer shall fill in the name of the witness and sign and issue a subpoena otherwise in blank to the party seeking it, together with a duplicate for proof of service. The party requesting the subpoena shall fill in both copies before service.

(d) Letters rogatory may be issued by the Hearing Officer as provided in 28 U.S.C. 1781-1784.

§ 1308.53 Service.

A subpoena may be served at any place, and may be served by any individual not a party who is at least 18 years of age, or as otherwise provided by law. Service may be made by an attorney or employee of a party. Service shall be made by personal delivery of the subpoena to the individual named therein, together with tender of the amounts required by 5 U.S.C. 503 or other applicable law. The individual making service shall file with the Board the duplicate subpoena, filled out as served, with the return of service filled in, signed and notarized.

§ 1308.54 Requests to quash or modify.

The person served with a subpoena (or a party, if the person served is a party's employee) may request the Hearing Officer to quash or modify a subpoena. Such requests shall be made and determined in accordance with the time limits and principles of Rule 45(a), (b) and (d) of the Federal Rules of Civil Procedure.

§ 1308.55 Penalties.

In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the court through the General Counsel of TVA for an order requiring the person to appear before the Hearing Officer, to produce evidence or give testimony, or both. Any failure of any such person to obey the order of the court may be punished by the court as a contempt thereof.

PART 1309—NONDISCRIMINATION WITH RESPECT TO AGE

Sec.

1309.1 What are the defined terms in this part and what do they mean?
1309.2 What is the purpose of the Act?
1309.3 What is the purpose of this part?
1309.4 What programs and activities are covered by the Act and this part?
1309.5 What are the rules against age discrimination?
1309.6 Is the normal operation or statutory objective of any program or activity an exception to the rules against age discrimination?
1309.7 Is the use of reasonable factors other than age an exception to the rules against age discrimination?
1309.8 Who has the burden of proving that an action is excepted?
1309.9 How does TVA provide financial assistance in conformity with the Act?
1309.10 What general responsibilities do recipients and TVA have to ensure compliance with the Act?
1309.11 What specific responsibilities do TVA and recipients have to ensure compliance with the Act?
1309.12 What are a recipient's responsibilities on compliance reviews and access to information?
1309.13 What are the prohibitions against intimidation or retaliation?
1309.14 How will complaints against recipients be processed?
1309.15 How will TVA enforce compliance with the Act and this part?
1309.16 What is the alternate funds disbursal procedure?
1309.17 What is the procedure for hearings and issuance of TVA decisions required by this part?
1309.18 Under what circumstances must recipients take remedial or affirmative action?
1309.19 When may a complainant file a civil action?

AUTHORITY: TVA Act of 1933, 48 Stat. 58 (1933), as amended, 16 U.S.C. 831-831dd (1976), and sec. 304 of the Age Discrimination Act of 1975, 89 Stat 729 (1975), as amended, 42 U.S.C. 6103 (1976).

SOURCE: 46 FR 30811, June 11, 1981, unless otherwise noted.

§ 1309.1 What are the defined terms in this part and what do they mean?

As used in this part the following terms have the stated meanings:

(a) "Act" means the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.* (Title III of Pub. L. 94-135).

(b) "Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) "Age" means how old a person is, or the number of elapsed years from the date of a person's birth.

(d) "Age distinction" means any action using age or an age-related term.

(e) "Age-related term" means a term which necessarily implies a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(f) "Financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement, by which TVA provides or otherwise makes available to a recipient assistance in any of the following forms:

(1) Funds;

(2) Services of TVA personnel;

(3) Real and personal property or any interest in or use of property, including:

(i) Transfers or leases of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the share of its fair market value provided by TVA is not returned to TVA.

(g) For purposes of §§ 1309.6 and 1309.7, "normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet it objectives.

(h) For purposes of §§ 1309.6 and 1309.7, "statutory objective" means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

(i) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any State-created or recognized public or private agency, institution, organization, or other entity, or any person to which TVA extends financial assistance directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

(j) "Secretary" means the Secretary of the Department of Health, Education, and Welfare, and its successors.

(k) "United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

(l) "TVA" means the Tennessee Valley Authority.

§ 1309.2 What is the purpose of the Act?

The Act is designed to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and this part.

§ 1309.3 What is the purpose of this part?

The purpose of this part is to effectuate the Act in all programs or activities of recipients which receive financial assistance from TVA, and to inform the public and the recipients of financial assistance from TVA of the Act's requirements and how it will be enforced.

§ 1309.4 What programs and activities are covered by the Act and this part?

(a) The Act and this part apply to any program or activity receiving financial assistance from TVA.

(b) The Act and this part do not apply to:

(1) An age distinction contained in that part of a Federal, State or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program.

§ 1309.5 What are the rules against age discrimination?

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving financial assistance from TVA.

(b) *Specific rules.* In any program or activity receiving financial assistance from TVA, a recipient may not directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving financial assistance from TVA, or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving financial assistance from TVA.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

(d) The rules stated in this section are limited by the exceptions contained in §§ 1309.6 and 1309.7.

§ 1309.6 Is the normal operation or statutory objective of any program or activity an exception to the rules against age discrimination?

A recipient is permitted to take an action, otherwise prohibited by § 1309.5, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) It is impractical to measure the other characteristic(s) directly on an individual basis.

§ 1309.7 Is the use of reasonable factors other than age an exception to the rules against age discrimination?

A recipient is permitted to take an action otherwise prohibited by § 1309.5 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 1309.8 Who has the burden of proving that an action is excepted?

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 1309.6 and 1309.7 is on the recipient of financial assistance from TVA.

§ 1309.9 How does TVA provide financial assistance in conformity with the Act?

(a) TVA contributes financial assistance only under agreements which contain a provision which specifically requires compliance with the Act and this part. If the financial assistance involves the furnishing of real property, the agreement shall obligate the recipient, or the transferee in the case of a subsequent transfer, for the period during which the real property is used for a purpose for which the financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where the financial assistance involves the furnishing of personal property, the agreement shall obligate the recipient during the period for which ownership or possession of the property is retained. In all other cases the agreement shall obligate the recipient for the period during which financial assistance is extended pursuant to the agreement. TVA shall specify the form of the foregoing agreement, and the extent to which an agreement shall be

applicable to subcontractors, transferees, successors in interest, and other participants in the program.

(b) In the case of real property, structures or improvements thereon, or interests therein, acquired through a program of TVA financial assistance, or in the case where TVA financial assistance was provided in the form of a transfer by TVA of real property or an interest therein, the instrument effecting or recording the transfer of title shall contain a covenant running with the land assuring compliance with this part and the guidelines contained herein for the period during which the real property is used for a purpose for which the TVA financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of TVA financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained by transfer from TVA, the covenant against discrimination may also include a condition coupled with a right to be reserved by TVA to revert title to the property in the event of a breach of the covenant where, in the discretion of TVA, such a condition and right of reverter is appropriate to the nature of (1) the program under which the real property is obtained, (2) the recipient, and (3) the instrument effecting or recording the transfer of title. In such event, if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, TVA may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as it deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 1309.10 What general responsibilities do recipients and TVA have to ensure compliance with the Act?

(a) A recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and afford TVA access to its records to the extent required by TVA to determine whether the recipient is in compliance with the Act.

(b) TVA has responsibility to attempt to secure a recipient's compliance with the Act by voluntary means, to the fullest extent practicable, and to provide assistance and guidance to recipients to help them comply voluntarily. TVA may use the services of appropriate Federal, State, local, or private organizations for this purpose. TVA also has the responsibility to enforce the Act when a recipient fails to eliminate violations of the Act.

§ 1309.11 What specific responsibilities do TVA and recipients have to ensure compliance with the Act?

(a) *Written notice, technical assistance, and educational materials.* TVA shall:

(1) Provide written notice to each recipient of its obligations under the Act. The notice shall include a requirement that where the recipient initially receiving funds makes the funds available to a subrecipient, the recipient must notify the subrecipient of its obligations under the Act. The notice may be made a part of the contract under which financial assistance is provided by TVA.

(2) Provide technical assistance to recipients, where necessary, to aid them in complying with the Act.

(3) Make available educational materials setting forth the rights and obligations of beneficiaries and recipients under the Act.

§ 1309.12 What are a recipient's responsibilities on compliance reports and access to information?

(a) *Compliance reports.* Each recipient shall keep such records and submit to TVA timely, complete and accurate

compliance reports at such times and in such form and containing such information, as TVA may determine to be necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient passes through financial assistance from TVA to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(b) *Access to sources of information.* Each recipient shall permit access by TVA during normal business hours to such of its books, records, accounts and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person, and such agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(c) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives financial assistance, and make such information available to them in such manner as TVA finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 1309.13 What are the prohibitions against intimidation or retaliation?

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right secured by the Act or this part, or because such individual has made a complaint, testified, assisted, or participated in any manner in an investigation, mediation, hearing, or other proceeding under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, mediation, hearing, or judicial proceeding arising under the Act or this part.

§ 1309.14 How will complaints against recipients be processed?

(a) *Receipt of complaints.* Any individual who claims (individually or on behalf of any specific class of individuals) that he or she has been subjected to discrimination prohibited by this part (including § 1309.13) may file a written complaint with TVA. The written complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by TVA for good cause shown. A complaint shall be signed by the complainant, give the name and mailing address of the complainant and the recipient, identify the TVA financial assistance program involved, and state the facts and occurrences (including dates) which led the complainant to believe that an act of prohibited discrimination has occurred. Anonymous complaints will not be accepted or filed under this section, but may be the basis for a compliance review. TVA will reject any complaint which does not fall within the coverage of the Act and this part, and may reject or require supplementation or clarification of any complaint which does not contain sufficient information for further processing as set forth in this paragraph. A complaint shall not be deemed filed until all such information has been provided to TVA.

(b) *Prompt resolution of complaints.* The complaint shall be resolved promptly. To this end, TVA shall proceed with the complaint without undue delay so that the complaint is resolved within 180 calendar days after it is filed with TVA. The recipient and complainant involved in each complaint are required to cooperate in this effort. Failure to cooperate on the part of the complainant may result in cancellation of the complaint, while such failure on the part of the recipient may result in enforcement action as described in § 1309.15.

(c) *Mediation of complaints.* All complaints which fall within the coverage of the Act and this part will be referred to a mediation agency designated by the Secretary.

(1) The participation of the recipient and the complainant in the mediation process is required, although both parties need not meet with the mediator at the same time.

(2) If the complainant and recipient reach a mutually satisfactory resolution of the complaint during the mediation period, they shall reduce the agreement to writing. The mediator shall send a copy of the settlement to TVA. No further action shall be taken based on that complaint unless it appears that the complainant or the recipient is failing to comply with the agreement.

(3) Not more than 60 days after the complaint is filed, the mediator shall return a still unresolved complaint to TVA for initial investigation. The mediator may return a complaint at any time before the end of the 60-day period if it appears that the complaint cannot be resolved through mediation.

(4) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the agency appointing the mediator.

(d) *Investigation.* (1) TVA will make a prompt investigation whenever a complaint is unresolved within 60 days after it is filed with TVA or is reopened because of a violation of the mediation agreement. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with the Act and this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with the Act and this part.

(2) As part of the initial investigation, TVA shall use informal fact finding methods including joint or individual discussions with the complainant and recipient to establish the facts, and, if possible, to resolve the complaint to the mutual satisfaction of the parties. TVA may seek the assistance of any involved State program agency.

(3) If TVA cannot resolve the matter within 10 calendar days after the mediator returns the complaint, it shall complete the investigation, attempt to achieve voluntary compliance satisfactory to TVA, if the investigation indicates a violation, and arrange for enforcement as described in § 1309.15, if necessary.

§ 1309.15 How will TVA enforce compliance with the Act and this part?

(a) If a compliance report, self-evaluation, or preaward review indicates a violation or threatened violation of the Act or this part, TVA shall attempt to secure the recipient's voluntary compliance with the Act and this part. If the violation or threatened violation cannot be corrected by informal means, compliance with the Act and this part may be effected by the following means:

(1) Termination of a recipient's financial assistance under the program or activity involved where the recipient has violated the Act or this part. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an appropriate hearing officer.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or this part.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency which will have the effect of correcting a violation of the Act or this part.

(iii) Commencement by TVA of proceedings to enforce any rights of TVA or obligations of the recipient created by the contract, the Act, or this part.

(b) Any termination under paragraph (a)(1) of this section shall be limited to the particular recipient and the particular programrm or activity (or portion thereof) receiving financial as-

sistance from TVA which is found to be in violation of the Act or this part. No termination shall be based in whole or in part on a finding with respect to any program or activity which does not receive financial assistance from TVA.

(c) No assistance will be terminated under paragraph (a)(1) of this section until:

(1) TVA has advised the recipient of its failure to comply with the Act or this part and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after TVA has sent a written report of the circumstances and grounds of the termination of assistance to the committees of the Congress having legislative jurisdiction over the TVA program or activity involved. A report shall be filed in each case in which TVA has determined that assistance will be terminated under paragraph (a)(1) of this section.

(d) TVA may defer granting new financial assistance to a recipient when termination proceedings under paragraph (a)(1) of this section are initiated.

(1) New financial assistance includes all assistance administrated by or through TVA for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period. New financial assistance does not include assistance approved prior to the beginning of termination proceedings.

(2) A deferral may not begin until the recipient has received a notice of opportunity for a hearing under paragraph (a)(1) of this section. A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and TVA. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 1309.16 What is the alternate funds disbursal procedure?

When TVA withholds funds from a recipient under this part, TVA may contract to disburse the withheld funds directly to any public or nonprofit private organization or agency, or State or political subdivision of the State. These alternate recipients must demonstrate the ability to comply with this part and to achieve the goals of the program or activity involved.

§ 1309.17 What is the procedure for hearings and issuance of TVA decisions required by this part?

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1309.15(a)(1), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected recipient. This notice shall advise the recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the recipient may request of TVA that the matter be scheduled for hearing or (2) advise the recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. A recipient may waive a hearing and submit written information and argument for the record. The failure of a recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under the Act and § 1309.15(a)(1) and a consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the time and place fixed by TVA unless it determines that the convenience of the recipient requires that another place be selected. Hearings shall be held before a hearing officer who shall be designated by TVA's General Manager, and who shall not be a TVA employee.

(c) *Right to counsel.* In all proceedings under this section, the recipient

and TVA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof by TVA's Board of Directors shall be conducted in conformity with this part and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters, as prescribed by the hearing officer. Both TVA and the recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing officer at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or received for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under the Act, the TVA Board may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of the rules of procedure applicable to such hearings by such other departments or agencies. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with paragraph (f) of this section.

(f) *Decisions.* (1) After the hearing, or after the hearing is waived under paragraph (a) of this section, the hearing officer shall make an initial decision. The recipient may file exceptions to the decision with the TVA Board within 10 days of receipt of the decision. If exceptions are not filed within the specified time, the hearing officer's initial decision becomes the final TVA decision.

(2) Based on the hearing record, investigation, and any written submission to the hearing officer or the TVA Board, the Board shall render its decision accepting the initial decision, or rejecting it, in whole or part.

(3) The final decision may provide for suspension or termination of, or refusal to grant or continue financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no financial assistance will thereafter be extended under such program to the recipient determined by such decision to have failed to comply with this part, unless and until it corrects its noncompliance and satisfies TVA that it will fully comply with this part.

(g) *Posttermination proceedings.* (1) A recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive financial assistance from TVA if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request TVA to restore fully its eligibility to receive financial assistance from TVA. Any such request shall be supported by information showing that the recipient has met

the requirements of paragraph (g)(1) of this section. If TVA determines that those requirements have been satisfied, it shall restore such eligibility.

(3) If TVA denies any such request, the recipient may submit a written request for a hearing, specifying why it believes TVA to have been in error. The recipient shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by TVA. The recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f)(3) of this section shall remain in effect.

§ 1309.18 Under what circumstances must recipients take remedial or affirmative action?

(a) Where a recipient is found to have discriminated on the basis of age, the recipient shall take any remedial action which TVA may require to overcome the effects of the discrimination. if another recipient exercises control over the recipient that has discriminated, both recipients may be required to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation recipient's program or activity on the basis of age.

(c) If a recipient operating a program which serves the elderly or children, in addition to persons of other ages, provides special benefits to the elderly or to children, the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

§ 1309.19 When may a complainant file a civil action?

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and TVA has made no finding with regard to the complaint; or

(2) TVA issues any finding in favor of the recipient.

(b) If either of the conditions set forth in paragraph (a) of this section is satisfied, TVA shall:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right, under Section 305(e) of the Act, to bring a civil action for injunctive relief that will effect the purposes of the Act; and

(3) Inform the complainant:

(i) That a civil action can only be brought in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint;

(iii) That before commencing the action the complainant shall give 30 days' notice by registered mail to the Secretary, the Attorney General of the United States, TVA, and the recipient;

(iv) That the notice shall state: the alleged violation of the Act; the relief requested; the court in which the action will be brought; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That no action shall be brought if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

PART 1310—ADMINISTRATIVE COST RECOVERY

Sec.

1310.1 Purpose.
1310.2 Application.
1310.3 Assessment of administrative charge.

AUTHORITY: 16 U.S.C. 831-831dd; 31 U.S.C. 9701.

SOURCE: 48 FR 16657, Apr. 19, 1983, unless otherwise noted.

§ 1310.1 Purpose.

The purpose of the regulations in this part is to establish a schedule of fees to be charged in connection with the disposition and uses of, and activities affecting, real property in TVA's custody or control, and certain other activities in order to help ensure that such activities are self-sustaining to the full extent possible.

§ 1310.2 Application.

(a) TVA will undertake the following actions only upon the condition that the applicant pay to TVA such administrative charge as the Director of Land and Forest Resources or Chief of the Power Management Services Staff (hereinafter "responsible land manager"), as appropriate, shall assess in accordance with § 1310.3 of this part; provided, however, that no payment shall be required where the responsible land manager determines that there is a corresponding benefit to TVA:

(1) Conveyance and abandonment of TVA land or landrights, except as provided in paragraph (b)(5) of this section.

(2) Other private uses of TVA land not involving the disposition of TVA real property or interests in real property.

(3) Actions taken to suffer the presence of unauthorized fills and structures over, on, or across TVA land or landrights, and including actions not involving the abandonment or disposal of TVA land or landrights.

(4) Actions taken to approve fills or structures constructed either without prior approval of plans under section 26a of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831y-1), and TVA's regulations issued thereunder at 18 CFR Part 1304, or not in accordance with such plans previously approved by TVA.

(b) *Exemption.* An administrative charge shall not be made for the following actions:

(1) Agricultural licenses.

(2) Firewood cutting permits and timber sale contracts.

(3) Permits for the nonexclusive short-term use of TVA land.

(4) Uses of TVA land, at no charge, for utility line crossings, not involving the disposition of TVA real property or interests in real property.

(5) Conveyance and abandonment of TVA land or landrights at no charge to States and municipalities, and political subdivisions and agencies thereof.

(6) Conveyances pursuant to section 4(k)(d) of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831c(k)(d)).

(7) Releases of unneeded mineral right options.

(8) TVA phosphate land and mineral transactions.

(9) Permits and licenses for use of TVA land by distributors of TVA power.

(c) *Quota deer hunt and turkey hunt applications.* Quota deer hunt and turkey hunt permit applications will be processed by TVA if accompanied by the fee prescribed in paragraph (d) of § 1310.3 of this part.

[48 FR 16657, Apr. 19, 1983, as amended at 52 FR 25592, July 8, 1987; 53 FR 2827, Feb. 2, 1988]

§ 1310.3 Assessment of administrative charge.

(a) *Range of charges.* Except as otherwise provided herein, the responsible land manager shall assess a charge which he determines in his sole judgment to be approximately equal to the administrative costs incurred by TVA for each action including both the direct cost to TVA and applicable overheads. With respect to the following categories of actions, a charge of not less than the minimum or greater than the maximum amount specified herein shall be assessed except as otherwise provided in paragraph (c) of this section.

(1) Land transfers—$500-$4,400.

(2) Use permits or licenses—$50-$625.

(3) Actions taken to approve plans for fills or structures constructed either without prior approval by TVA under section 26a of the TVA Act or not in accordance with such plans previously approved by TVA, and other actions, where appropriate, to suffer the presence of such fills or structures or to reach other agreements with respect to such fills or structures—$100-$2,500.

(4) Abandonment of transmission line easements and rights of way—$100-$1,500.

(b) *Basis of charge.* The administrative charge assessed by the responsible land manager shall, to the extent applicable, include the following costs:

(1) Appraisal of the land or landrights affected;

(2) Assessing applicable rental fees;

(3) Field inspections and investigations;

(4) Title and record searches;

(5) Preparation for conducting public auction and negotiated sales;

(6) Mapping and surveying;

(7) Preparation of conveyance instrument, permit, or other authorization or approval instrument;

(8) Coordination of the proposed action within TVA and with other Federal, State, and local agencies;

(9) Legal review; and

(10) Administrative overheads associated with the transaction.

(c) *Assessment of charge when actual administrative costs significantly exceed established range.* When the responsible land manager determines that the actual administrative costs are expected to significantly exceed the range of costs established in paragraph (a) of this section, such manager shall not proceed with the TVA action until agreement is reached on payment of a charge calculated to cover TVA's actual administrative costs.

(d) *Quota deer hunt and turkey hunt application fees.* A fee of $2 for each person must accompany the completed application form for a quota deer hunt and turkey hunt permit. Applications will not be processed unless accompanied by the correct fee amount. No refunds will be made to unsuccessful applicants, except that fees received after the application due date will be refunded.

(e) *Additional charges.* In addition to the charges assessed under these regulations, TVA may charge for its services if TVA is required to make environmental investigations or otherwise incur additional expenses as provided in section 5.7.2 of TVA's procedures implementing the National Environmental Policy Act (45 FR 54511-54515).

[48 FR 16657, Apr. 19, 1983, as amended at 52 FR 25592, July 8, 1987; 53 FR 2827, Feb. 2, 1988]

PART 1311—INTERGOVERNMENTAL REVIEW OF TENNESSEE VALLEY AUTHORITY FEDERAL FINANCIAL ASSISTANCE AND DIRECT FEDERAL DEVELOPMENT PROGRAMS AND ACTIVITIES

Sec.

1311.1 What is the purpose of these regulations?
1311.2 What definitions apply to these regulations?
1311.3 What programs and activities of TVA are subject to these regulations?
1311.4 [Reserved]
1311.5 What is TVA's obligation with respect to federal interagency coordination?
1311.6 What procedures apply to the selection of programs and activities under these regulations?
1311.7 How does TVA communicate with state, regional and local officials concerning TVA's programs and activities?
1311.8 How does TVA provide states an opportunity to comment on proposed federal financial assistance and direct federal development?
1311.9 How does TVA receive and respond to comments?
1311.10 How does TVA make efforts to accommodate intergovernmental viewpoints?
1311.11 What are TVA's obligations in interstate situations?
1311.12 [Reserved]
1311.13 May TVA waive any provision of these regulations?

AUTHORITY: Tennessee Valley Authority Act of 1933, 48 Stat. 58, as amended, 16 U.S.C. 831-831dd (1976; Supp. V, 1981); E. O. 12372, July 14, 1982 (47 FR 30,959), amended April 8, 1983 (48 FR 15,887); sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended.

SOURCE: 48 FR 29399, June 24, 1983, unless otherwise noted.

§ 1311.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968

and are intended to assist TVA in carrying out its responsibilities under the TVA Act.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional, and local coordination for review of proposed federal financial assistance a id direct federal development.

(c) These regulations are intended to aid the internal management of TVA, and are not intended to create any right or benefit enforceable at law by a party against TVA or its officers.

§ 1311.2 What definitions apply to these regulations?

"TVA" means the Tennessee Valley Authority, a wholly owned corporation and independent instrumentality of the United States.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 1311.3 What programs and activities of TVA are subject to these regulations?

TVA publishes in the FEDERAL REGISTER a list of TVA's federal financial assistance and direct federal development programs and activities that are subject to these regulations.

§ 1311.4 [Reserved]

§ 1311.5 What is TVA's obligation with respect to federal interagency coordination?

TVA, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and TVA regarding programs and activities covered under these regulations.

§ 1311.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with § 1311.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify TVA of the programs and activities selected for that process.

(c) A state may notify TVA of changes in its selections at any time. For each change, the state shall submit to TVA an assurance that the state has consulted with local elected officials regarding the change. TVA may establish deadlines by which states are required to inform TVA of changes in their program selections.

(d) TVA uses a state's process as soon as feasible, depending on individual programs and activities, after TVA is notified of the states selections.

§ 1311.7 How does TVA communicate with state, regional, and local officials concerning TVA's programs and activities?

(a) For those programs and activities covered by a state process under § 1311.6, TVA, to the extent permitted by law:

(1) Uses the official state process to determine views of state and local elected officials, and

(2) Communicates with state and local elected officials, through the official state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) TVA provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance or direct federal development if:

(1) The state has not adopted a process under the Order;

(2) The assistance or development involves a program or activity not selected for the state process; or

(3) The particular government entity is not part of or involved in the state process.

This notice may be made by a publication widely available in the potentially affected area or other appropriate means, which TVA in its discretion deems appropriate.

§ 1311.8 How does TVA provide states an opportunity to comment on proposed federal financial assistance and direct federal development?

(a) Except in unusual circumstances, TVA gives state processes or directly affected state, areawide, regional, and local officials and entities:

(1) [Reserved]

(2) At least 60 days from the date established by TVA to comment on proposed direct Federal development or federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with TVA have been delegated or when TVA provides notice directly to potentially affected state, areawide, regional, or local entities under § 1311.7(b).

§ 1311.9 How does TVA receive and respond to comments?

(a) TVA follows the procedures in § 1311.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 1311.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional, or local officials and entities where there is no state process recommendation; however, these officials or entities may submit comments directly to TVA for TVA's consideration.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional, and local officials and entities may submit comments to TVA.

(d) If a program or activity is not selected for a state process, state, areawide, regional, and local officials and entities may submit comments to TVA. In addition, if a state process recommendation for a nonselected program or activity is transmitted to TVA by the single point of contact, TVA follows the procedures of § 1311.10 of this part.

(e) TVA considers comments which do not constitute a state process recommendation submitted under these regulations and for which TVA is not required to apply the procedures of § 1311.10 of this part, when such comments are provided by a single point of contact or directly to TVA by a state, areawide, regional, or local government.

§ 1311.10 How does TVA make efforts to accommodate intergovernmental viewpoints?

(a) If a state process provides a state process recommendation to TVA through its single point contact, TVA either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact (including any regional or local office delegated a review and comment role by the state process) with written explanation of the decision in such form as TVA in its discretion deems appropriate. TVA may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunications, meeting with the single point of contact, and, as appropriate, other interested officials or offices, or other means.

(b) In any explanation under paragraph (a)(3) of this section, TVA informs the single point of contact that:

(1) TVA will not implement its decision for at least 10 days after the single point of contact receives the explanation; or

(2) TVA's General Manager has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least 10 days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, the explanation is presumed to have been received five days after the date of mailing of such notification.

§ 1311.11 What are TVA's obligations in interstate situations?

(a) TVA is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that potentially impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select TVA's program or activity;

(3) In accordance with § 1311.7(b), making efforts to identify and notify the affected state, areawide, regional and local officials and entities in those states that have not adopted a process under the Order or do not select TVA's program or activity;

(4) Responding pursuant to § 1311.10 of this part if TVA receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with TVA have been delegated.

(b) TVA uses the procedures in § 1311.10 if a state process provides a state process recommendation to TVA through a single point of contact.

§ 1311.12 [Reserved]

§ 1311.13 May TVA waive any provision of these regulations?

In an emergency, TVA may waive any provision of these regulations.

PART 1312—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

Sec.

1312.1 Purpose.
1312.2 Authority.
1312.3 Definitions.
1312.4 Prohibited acts.
1312.5 Permit requirements and exceptions.
1312.6 Application for permits and information collection.
1312.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.
1312.8 Issuance of permits.
1312.9 Terms and conditions of permits.
1312.10 Suspension and revocation of permits.
1312.11 Appeals relating to permits.
1312.12 Relationship to section 106 of the National Historic Preservation Act.
1312.13 Custody of archaeological resources.
1312.14 Determination of archaeological or commercial value and cost of restoration and repair.
1312.15 Assessment of civil penalties.
1312.16 Civil penalty amounts.
1312.17 Other penalties and rewards.
1312.18 Confidentiality of archaeological resource information.
1312.19 Report.

AUTHORITY: Pub. L. 96-95, 93 Stat. 721 (16 U.S.C. 470aa—470*ll*) (sec. 10(a)). Related authority Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1996).

SOURCE: 49 FR 1028, Jan. 6, 1984, unless otherwise noted.

§ 1312.1 Purpose.

(a) The regulations in this part implement provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa—470*ll*) by establishing the uniform definitions, standards, and procedures to be followed by all Federal land managers in providing protection for archaeological resources, located on public lands and Indian lands of the United States. These regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996), through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about ar-

chaeological resources when disclosure would threaten the archaeological resources.

(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

§ 1312.2 Authority.

(a) The regulations in this part are promulgated pursuant to section 10(a) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii), which requires that the Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority jointly develop uniform rules and regulations for carrying out the purposes of the Act.

(b) In addition to the regulations in this part, section 10(b) of the Act (16 U.S.C. 470ii) provides that each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations in this part, as may be necessary for carrying out the purposes of the Act.

§ 1312.3 Definitions.

As used for purposes of this part:

(a) "Archaeological resource" means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.

(1) "Of archaeological interest" means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(2) "Material remains" means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

(3) The following classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (5) of this section:

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits or graves, hearths, kilns, post molds, wall trenches, middens);

(ii) Surface or subsurface artifact concentrations or scatters;

(iii) Whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing, and ornaments (including, but not limited to, pottery and other ceramics, cordage, basketry and other weaving, bottles and other glassware, bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked, ground, or pecked stone);

(iv) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including, but not limited to, vegetal and animal remains, coprolites);

(vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);

(vii) Rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the above material remains;

(ix) All portions of shipwrecks (including, but not limited to, armaments, apparel, tackle, cargo);

(x) Any portion or piece of any of the foregoing.

(4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Federal land manager may determine that certain material remains, in specified areas under the Federal land manager's jurisdiction, and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this subparagraph shall be documented. Such determination shall in no way affect the Federal land manager's obligations under other applicable laws or regulations.

(b) "Arrowhead" means any projectile point which appears to have been designed for use with an arrow.

(c) "Federal land manager" means:

(1) With respect to any public lands, the secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands, including persons to whom such management authority has been officially delegated;

(2) In the case of Indian lands, or any public lands with respect to which no department, agency or instrumentality has primary management authority, such term means the Secretary of the Interior;

(3) The Secretary of the Interior, when the head of any other agency or instrumentality has, pursuant to section 3(2) of the Act and with the consent of the Secretary of the Interior, delegated to the Secretary of the Interior the responsibilities (in whole or in part) in this part.

(d) "Public lands" means:

(1) Lands which are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and

(2) All other lands the fee title to which is held by the United States, except lands on the Outer Continental Shelf, lands under the jurisdiction of the Smithsonian Institution, and Indian lands.

(e) "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian tribe or Indian individual.

(f) "Indian tribe" as defined in the Act means any Indian tribe, band, nation, or other organized group or community, including any Alaska village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688). In order to clarify this statutory definition for purposes of this part, "Indian tribe" means:

(1) Any tribal entity which is included in the annual list of recognized tribes published in the FEDERAL REGISTER by the Secretary of the Interior pursuant to 25 CFR Part 54;

(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR Part 54 since the most recent publication of the annual list; and

(3) Any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and any Alaska Native village or tribe which is recognized by the Secretary of the Interior as eligible for services provided by the Bureau of Indian Affairs.

(g) "Person" means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(h) "State" means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(i) "Act" means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-470*ll*).

[49 FR 1028, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]

§ 1312.4 Prohibited acts.

(a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under § 1312.8 or exempted by § 1312.5(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

§ 1312.5 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from public lands or Indian lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Federal land manager for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Federal land manager may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § 1312.8(a) of this part.

(b) Exceptions:

(1) No permit shall be required under this part for any person conducting activities on the public lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removal as used in this part. This exception does not, however, affect the Federal land manager's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses, or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this part, provided that such collecting does not result in disturbance of any archaeological resource.

(3) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal or archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this part;

(4) No permit shall be required under this part for any person to carry out any archaeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Archaeological Resources Protection Act of 1979. Such permit shall remain in effect according to its terms and conditions until expiration.

(5) No permit shall be required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Federal land manager's direction, associated with the management of archaeological resources, need not follow the permit application procedures of § 1312.6. However, the Federal land manager shall insure that provisions of §§ 1312.8 and 1312.9 have been met by other documented means, and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Federal land manager, have been the subject of consideration under § 1312.7.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal land manager shall issue a permit, subject to the provisions of §§ 1312.5(b)(5), 1312.7, 1312.8(a)(3), (4), (5), (6), and (7), 1312.9, 1312.10, 1312.12, and 1312.13(a) to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for

purposes of conducting archaeological research, excavating and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Federal land manager.

(e) Under other statutory, regulatory, or administrative authorities governing the use of public lands and Indian lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on public lands or Indian lands any activities related to but believed to fall outside the scope of this part should consult with the Federal land manager, for the purpose of determining whether any authorization is required, prior to beginning such activities.

§ 1312.6 Application for permits and information collection.

(a) Any person may apply to the appropriate Federal land manager for a permit to excavate and/or remove archaeological resources from public lands or Indian lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, locational maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in § 1312.8(a).

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archaeological resources on public lands, the names of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and tm safeguard and preserve these materials as property of the United States.

(6) Where the application is for the excavation and/or removal of archaeological resources on Indian lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, ald other documents derived from the proposed work, and all collections in the event the Indian owners do not wish tm take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, or willingness tm assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work.

(c) The Federal land manager may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

(d) *Paperwork Reduction Act.* The information collection requirement contained in § 1312.6 of these regulations has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0037. The purpose of the information collection is to meet statutory and administrative requirements in the public interest. The information will be used to assist Federal land managers in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and as-

sociated records and data will be properly preserved, and that the permitted activity would not conflict with the management of the public lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

(Approved by the Office of Management and Budget under control number 1024-0037)

§ 1312.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on public lands, as determined by the Federal land manager, at least 30 days before issuing such a permit the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Federal land manager to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal land manager.

(2) The Federal land manager may provide notice to any other Native American group that is known by the Federal land manager to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Federal land manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under § 1312.9.

(4) When the Federal land manager detemines that a permit applied for under this part must be issued immediately because of an imminent threat of loss or destruction of an archaeological resource, the Federal land manager shall so notify the appropriate tribe.

(b)(1) In order to identify sites of religious or cultural importance, the Federal land manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal land manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w-3).

(2) If the Federal land manager becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to public lands under the Federal land manager's jurisdiction, the Federal land manager may seek to communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Federal land manager may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

§ 1312.8 Issuance of permits.

(a) The Federal land manager may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of a permit; and

(v) Applicants proposing to engage in historical archaeology should have had at least one year of experience in research concerning archaeological resources of the historic period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the public lands concerned;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the public lands or Indian lands, and the proposed work has been agreed to in writing by the Federal land manager pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a)(2) and (3) shall be deemed satisfied by the prior approval.

(5) Written consent has been obtained, for work proposed on Indian lands, from the Indian landowner and the Indian tribe having jurisdiction over such lands;

(6) Evidence is submitted to the Federal land manager that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(7) The applicant has certified that, not later than 90 days after the date the final report is submitted to the Federal land manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit:

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archaeological resources from public lands.

(ii) All artifacts, samples and collections resulting from work under the requested permit for which the custody or disposition is not undertaken by the Indian owners, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit, where the permit is for the excavation and/or removal of archaeological resources from Indian lands.

(b) When the area of the proposed work would cross jurisdictional boundaries, so that permit applications must be submitted to more than one Federal land manager, the Federal land managers shall coordinate the review and evaluation of applications and the issuance of permits.

[49 FR 1028, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]

§ 1312.9 Terms and conditions of permits.

(a) In all permits issued, the Federal land manager shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location, and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational insitutions in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal land manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal land manager shall include in permits issued for archaeological work on Indian lands such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands, and for archaeological work on public lands shall include such terms and conditions as may have been developed pursuant to § 1312.7.

(d) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

(e) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.

(f) The permittee may request that the Federal land manager extend or modify a permit.

(g) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Federal land manager, at least annually.

§ 1312.10 Suspension and revocation of permits.

(a) *Suspension or revocation for cause.* (1) The Federal land manager may suspend a permit issued pursuant to this part upon determining that the permittee has failed to meet any of the terms and conditions of the permit or has violated any prohibition of the Act or § 1312.4. The Federal land manager shall provide written notice to the permittee of the suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Federal land manager may revoke a permit upon assessment of a civil penalty under § 1312.15 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) *Suspension or revocation for management purposes.* The Federal land manager may suspend or revoke a permit, without liability to the United States, its agents, or employees, when continuation of work under the permit would be in conflict with management requirements not in effect when the permit was issued. The Federal land manager shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

[49 FR 1028, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]

§ 1312.11 Appeals relating to permits.

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit through existing administrative appeal procedures, or through procedures which may be established by the Federal land manager pursuant to section 10(b) of the Act and this part.

§ 1312.12 Relationship to section 106 of the National Historic Preservation Act.

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with section 106 of the Act of October 15, 1966 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Federal land manager from compliance with section 106 where otherwise required.

§ 1312.13 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from the public lands remain the property of the United States.

(b) Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.

(c) The Secretary of the Interior may promulgate regulations providing for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, for the ultimate disposition of archaeological resources, and for standards by which archaeological resources shall be preserved and maintained, when such resources have been excavated or removed from public lands and Indian lands.

(d) In the absence of regulations referenced in paragraph (c) of this section, the Federal land manager may provide for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, when such resources have been excavated or removed from public lands under the authority of a permit issued by the Federal land manager.

§ 1312.14 Determination of archaeological or commercial value and cost of restoration and repair.

(a) *Archaeological value.* For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in § 1312.4 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) *Commercial value.* For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in § 1312.4 of this part or conditions of a permit issued pursuant to this part shall be its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation, to the extent that its prior condition can be ascertained.

(c) *Cost of restoration and repair.* For purposes of this part, the cost of restoration and repair of archaeological resources damaged as a result of a violation of prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

(1) Reconstruction of the archaeological resource;

(2) Stabilization of the archaeological resource;

(3) Ground contour reconstruction and surface stabilization;

(4) Research necessary to carry out reconstruction or stabilization;

(5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

(6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Federal land manager.

(8) Preparation of reports relating to any of the above activities.

§ 1312.15 Assessment of civil penalties.

(a) The Federal land manager may assess a civil penalty against any person who has violated any prohibition contained in § 1312.4 or who has violated any term or condition includ-

ed in a permit issued in accordance with the Act and this part.

(b) *Notice of violation.* The Federal land manager shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of a proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

(4) Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Federal land manager's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

(1) Seek informal discussions with the Federal land manager;

(2) File a petition for relief in accordance with paragraph (d) of this section;

(3) Take no action and await the Federal land manager's notice of assessment;

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.

(d) *Petition for relief.* The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Federal land manager within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) *Assessment of penalty.* (1) The Federal land manager shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion of informal discussions, whichever is later.

(2) The Federal land manager shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Federal land manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal land manager shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal land manager shall determine a penalty amount in accordance with § 1312.16.

(f) *Notice of assessment.* The Federal land manager shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice of assessment:

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in § 1312.16 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) *Hearings.* (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal land manager under paragraph (f) of this section or any offer of mitigation or remission made by the Federal land manager.

(h) *Final administrative decision.* (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) *Payment of penalty.* (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a U.S. District Court as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Federal land manager may request the Attorney General to institute a civil action to collect the penalty in a U.S. District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Federal land manager is not represented by the Attorney General, a civil action may be initiated directly by the Federal land manager.

(j) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

§ 1312.16 Civil penalty amounts.

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § 1312.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the archaeological or commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition in § 1312.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the archaeological or commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) *Determination of penalty amount, mitigation, and remission.* The Federal land manager may assess a penalty amount less than the maxi-

mum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors:

(i) Agreement by the person being assessed a civil penalty to return to the Federal land manager archaeological resources removed from public lands or Indian lands;

(ii) Agreement by the person being assessed a civil penalty to assist the Federal land manager in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on public lands or Indian lands;

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation;

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances;

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) When the penalty is for a violation on Indian lands, the Federal land manager shall consult with and consider the interests of the Indian landowner and the Indian tribe having jurisdiction over the Indian lands prior to proposing to mitigate or remit the penalty.

(3) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on public lands, the Federal land manager should consult with and consider the interests of the affected tribe(s) prior to proposing to mitigate or remit the penalty.

[49 FR 1028, Jan. 6, 1984, as amended at 52 FR 47721, Dec. 16, 1987]

§ 1312.17 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Federal land manager may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or local government who furnish information or render service in the performance of their official duties, and persons who have provided information under § 1312.16(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indian or Indian tribe.

§ 1312.18 Confidentiality of archaeological resource information.

(a) The Federal land manager shall not make available to the public, under Subchapter II of Chapter 5 of Title 5 of the U.S. Code or any other provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(1) The Federal land manager may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469-469c), without risking harm to the archaeological resource or to the site in which it is located.

(2) The Federal land manager shall make information available, when the Governor of any State has submitted to the Federal land manager a written request for information, concerning the archaeological resources within the requesting Governor's State, provided that the request includes:

30-060 O—89——9

(i) The specific archaeological resource or area about which information is sought;

(ii) The purpose for which the information is sought; and

(iii) The Governor's written commitment to adequately protect the confidentiality of the information.

[49 FR 1028, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]

§ 1312.19 Report.

Each Federal land manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act.

PART 1313—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE TENNESSEE VALLEY AUTHORITY

Sec.

1313.101 Purpose.
1313.102 Application.
1313.103 Definitions.
1313.104—1313.109 [Reserved]
1313.110 Self-evaluation.
1313.111 Notice.
1313.112—1313.129 [Reserved]
1313.130 General prohibitions against discrimination.
1313.131—1313.139 [Reserved]
1313.140 Employment.
1313.141—1313.148 [Reserved]
1313.149 Program accessibility: Discrimination prohibited.
1313.150 Program accessibility: Existing facilities.
1313.151 Program accessibility: New construction and alterations.
1313.152—1313.159 [Reserved]
1313.160 Communications.
1313.161—1313.169 [Reserved]
1313.170 Compliance procedures.

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22889, 22896, June 23, 1986, unless otherwise noted.

§ 1313.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1313.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 1313.103 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alocoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"Historic preservation programs" means programs conducted by the agency that have preservation of historic properties as a primary purpose.

"Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

"Qualified handicapped person" means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can acheive the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1313.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 1313.104—1313.109 [Reserved]

§ 1313.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 1313.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1313.112—1313.129 [Reserved]

§ 1313.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or

otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 1313.131—1313.139 [Reserved]

§ 1313.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1313.141—1313.148 [Reserved]

§ 1313.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1313.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1313.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 13.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result

in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of the services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 1313.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 1313.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 1313.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 1313.152—1313.159 [Reserved]

§ 1313.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and adminstrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1313.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 1313.161—1313.169 [Reserved]

§ 1313.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Supervisor, Contracting and Community Assistance, shall be responsible for coordinating implementation of this section. Complaints may be sent to Supervisor, Contracting and Community Assistance, Tennessee Valley Authority, E5 B30, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt

of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 1313.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22889, 22896, June 23, 1986, as amended at 51 FR 22890, June 23, 1986]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
Redesignation Table
Transferred Regulations-Tennessee Valley Authority—List of CFR Sections Affected
List of CFR Sections Affected

Table of CFR Titles and Chapters

(Revised as of March 30, 1989)

Title 1—General Provisions

I Administrative Committee of the Federal Register (Parts 1—49)

II Office of the Federal Register (Parts 50—299)

III Administrative Conference of the United States (Parts 300—399)

IV Miscellaneous Agencies (Parts 400—500)

Title 2—[Reserved]

Title 3—The President

I Executive Office of the President (Parts 100—199)

Title 4—Accounts

I General Accounting Office (Parts 1—99)

II Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100—299)

III General Accounting Office (CASB) (Parts 300—499)

Title 5—Administrative Personnel

I Office of Personnel Management (Parts 1—1199)

II Merit Systems Protection Board (Parts 1200—1299)

III Office of Management and Budget (Parts 1300—1399)

IV Advisory Committee on Federal Pay (Parts 1400—1499)

V The International Organizations Employees Loyalty Board (Parts 1500—1599)

VI Federal Retirement Thrift Investment Board (Parts 1600—1699)

VII Advisory Commission on Intergovernmental Relations (Parts 1700—1799)

IX Appalachian Regional Commission (Parts 1900—1999)

XI United States Soldiers' and Airmen's Home (Parts 2100—2199)

XIV Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)

XV Office of Administration, Executive Office of the President (Parts 2500—2599)

Chap.

Title 6—[Reserved]

Title 7—Agriculture

SUBTITLE A—Office of the Secretary of Agriculture (Parts 0—26)

SUBTITLE B—Regulations of the Department of Agriculture

I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

II Food and Nutrition Service, Department of Agriculture (Parts 210—299)

III Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

IV Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

V Agricultural Research Service, Department of Agriculture (Parts 500—599)

VI Soil Conservation Service, Department of Agriculture (Parts 600—699)

VII Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700—799)

VIII Federal Grain Inspection Service, Department of Agriculture (Parts 800—899)

IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

XV Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

XVI Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)

XVII Rural Electrification Administration, Department of Agriculture (Parts 1700—1799)

XVIII Farmers Home Administration, Department of Agriculture (Parts 1800—2099)

XXI Foreign Economic Development Service, Department of Agriculture (Parts 2100—2199)

XXII Office of International Cooperation and Development, Department of Agriculture (Parts 2200—2299)

XXIV Board of Contract Appeals, Department of Agriculture (Parts 2400—2499)

XXV Office of the General Sales Manager, Department of Agriculture (Parts 2500—2599)

XXVI Office of Inspector General, Department of Agriculture (Parts 2600—2699)

Title 7—Agriculture—Continued

Chap

XXVII Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)

XXIX Office of Energy, Department of Agriculture (Parts 2900—2999)

XXX Office of Operations and Finance, Department of Agriculture (Parts 3000—3099)

XXXI Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)

XXXII Office of Grants and Program Systems, Department of Agriculture (Parts 3200—3299)

XXXIII Office of Transportation, Department of Agriculture (Parts 3300—3399)

XXXIV Cooperative State Research Service, Department of Agriculture (Parts 3400—3499)

XXXVI National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)

XXXVII Economic Research Service, Department of Agricuture (Parts 3700—3799)

XXXVIII World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)

XXXIX Economic Analysis Staff, Department of Agriculture (Parts 3900—3999)

XL Economics Management Staff, Department of Agriculture (Parts 4000—4099)

XLI National Agricultural Library, Department of Agriculture (Part 4100)

Title 8—Aliens and Nationality

I Immigration and Naturalization Service, Department of Justice (Parts 1—499)

Title 9—Animals and Animal Products

I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

II Packers and Stockyards Administration, Department of Agriculture (Parts 200—299)

III Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—399)

Title 10—Energy

I Nuclear Regulatory Commission (Parts 0—199)

II Department of Energy (Parts 200—699)

III Department of Energy (Parts 700—999)

X Department of Energy (General Provisions) (Parts 1000—1099)

XV Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500—1599)

Title 11—Federal Elections

Chap.

I Federal Election Commission (Parts 1—9099)

Title 12—Banks and Banking

I Comptroller of the Currency, Department of the Treasury (Parts 1—199)

II Federal Reserve System (Parts 200—299)

III Federal Deposit Insurance Corporation (Parts 300—399)

IV Export-Import Bank of the United States (Parts 400—499)

V Federal Home Loan Bank Board (Parts 500—599)

VI Farm Credit Administration (Parts 600—699)

VII National Credit Union Administration (Parts 700—799)

VIII Federal Financing Bank (Parts 800—899)

XI Federal Financial Institutions Examination Council (Parts 1100—1199)

Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1—199)

III Economic Development Administration, Department of Commerce (Parts 300—399)

V Regional Action Planning Commissions (Parts 500—599)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1—199)

II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

III Office of Commercial Space Transportation, Department of Transportation (Parts 400—499)

V National Aeronautics and Space Administration (Parts 1200—1299)

Title 15—Commerce and Foreign Trade

SUBTITLE A—Office of the Secretary of Commerce (Parts 0—29)

SUBTITLE B—Regulations Relating to Commerce and Foreign Trade

I Bureau of the Census, Department of Commerce (Parts 30—199)

II National Bureau of Standards, Department of Commerce (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

IV Foreign-Trade Zones Board (Parts 400—499)

VII Bureau of Export Administration, Department of Commerce (Parts 700—799)

VIII Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

Title 15—Commerce and Foreign Trade—Continued

Chap.

IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

XII United States Travel Service, Department of Commerce (Parts 1200—1299)

XIII East-West Foreign Trade Board (Parts 1300—1399)

XIV Minority Business Development Agency (Parts 1400—1499)

SUBTITLE C—Regulations Relating to Foreign Trade Agreements

XX Office of the United States Trade Representative (Parts 2000—2099)

SUBTITLE D—Regulations Relating to Telecommunications and Information

XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

I Federal Trade Commission (Parts 0—999)

II Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 1—199)

II Securities and Exchange Commission (Parts 200—399)

IV Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

III Delaware River Basin Commission (Parts 400—499)

VI Water Resources Council (Parts 700—799)

VIII Susquehanna River Basin Commission (Parts 800—899)

XIII Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I United States Customs Service, Department of the Treasury (Parts 1—199)

II United States International Trade Commission (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

Title 20—Employees' Benefits

I Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)

II Railroad Retirement Board (Parts 200—399)

III Social Security Administration, Department of Health and Human Services (Parts 400—499)

Title 20—Employees' Benefits—Continued

Chap.

IV Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)

V Employment and Training Administration, Department of Labor (Parts 600—699)

VI Employment Standards Administration, Department of Labor (Parts 700—799)

VII Benefits Review Board, Department of Labor (Parts 800—899)

VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)

Title 21—Food and Drugs

I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

Title 22—Foreign Relations

I Department of State (Parts 1—199)

II Agency for International Development, International Development Cooperation Agency (Parts 200—299)

III Peace Corps (Parts 300—399)

IV International Joint Commission, United States and Canada (Parts 400—499)

V United States Information Agency (Parts 500—599)

VI United States Arms Control and Disarmament Agency (Parts 600—699)

VII Overseas Private Investment Corporation, International Development Cooperation Agency (Parts 700—799)

IX Foreign Service Grievance Board Regulations (Parts 900—999)

X Inter-American Foundation (Parts 1000—1099)

XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)

XII United States International Development Cooperation Agency (Parts 1200—1299)

XIII Board for International Broadcasting (Parts 1300—1399)

XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)

XV African Development Foundation (Parts 1500—1599)

XVI Japan-United States Friendship Commission (Parts 1600—1699)

Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1—999)

II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

Title 23—Highways—Continued

Chap.

III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

SUBTITLE B—Regulations Relating to Housing and Urban Development

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

II Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699)

VII Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)

XI Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800—1899)

XII Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

XV Mortgage Insurance and Loan Programs under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700—2799)

XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3699)

XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)

Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

30-060 O—80——10

Title 25—Indians—Continued

Chap.

II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)

IV Navajo and Hopi Indian Relocation Commission (Parts 700—799)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1—699)

Title 27—Alcohol, Tobacco Products and Firearms

I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Title 28—Judicial Administration

I Department of Justice (Parts 0—199)

III Federal Prison Industries, Department of Justice (Parts 300—399)

V Bureau of Prisons, Department of Justice (Parts 500—599)

VI Offices of Independent Counsel, Department of Justice (Parts 600—699)

VII Office of Independent Counsel (Parts 700—799)

Title 29—Labor

SUBTITLE A—Office of the Secretary of Labor (Parts 0—99)

SUBTITLE B—Regulations Relating to Labor

I National Labor Relations Board (Parts 100—199)

II Bureau of Labor-Management Relations and Cooperative Programs, Department of Labor (Parts 200—299)

III National Railroad Adjustment Board (Parts 300—399)

IV Office of Labor-Management Standards, Department of Labor (Parts 400—499)

V Wage and Hour Division, Department of Labor (Parts 500—899)

IX Construction Industry Collective Bargaining Commission (Parts 900—999)

X National Mediation Board (Parts 1200-1299)

XII Federal Mediation and Conciliation Service (Parts 1400-1499)

XIV Equal Employment Opportunity Commission (Parts 1600-1699)

XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

XX Occupational Safety and Health Review Commission (Parts 2200—2499)

XXV Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

XXVI Pension Benefit Guaranty Corporation (Parts 2600—2699)

XXVII Federal Mine Safety and Health Review Commission (Parts 2700—2799)

Title 30—Mineral Resources

Chap.

I Mine Safety and Health Administration, Department of Labor (Parts 1—199)

II Minerals Management Service, Department of the Interior (Parts 200—299)

III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300—399)

IV Geological Survey, Department of the Interior (Parts 400—499)

VI Bureau of Mines, Department of the Interior (Parts 600—699)

VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

Title 31—Money and Finance: Treasury

SUBTITLE A—Office of the Secretary of the Treasury (Parts 0—50)

SUBTITLE B—Regulations Relating to Money and Finance

I Monetary Offices, Department of the Treasury (Parts 51—199)

II Fiscal Service, Department of the Treasury (Parts 200—399)

IV Secret Service, Department of the Treasury (Parts 400—499)

V Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)

VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)

Title 32—National Defense

SUBTITLE A—Department of Defense

I Office of the Secretary of Defense (Parts 1—399)

V Department of the Army (Parts 400—699)

VI Department of the Navy (Parts 700—799)

VII Department of the Air Force (Parts 800—1099)

SUBTITLE B—Other Regulations Relating to National Defense

XII Defense Logistics Agency (Parts 1200-1299)

XVI Selective Service System (Parts 1600-1699)

XIX Central Intelligence Agency (Parts 1900—1999)

XX Information Security Oversight Office (Parts 2000—2099)

XXI National Security Council (Parts 2100—2199)

XXIV Office of Science and Technology Policy (Parts 2400—2499)

XXVII Office for Micronesian Status Negotiations (Parts 2700—2799)

XXVIII Office of the Vice President of the United States (Parts 2800—2899)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Transportation (Parts 1—199)

II Corps of Engineers, Department of the Army (Parts 200—399)

Title 33—Navigation and Navigable Waters—Continued

Chap.

IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

SUBTITLE A—Office of the Secretary, Department of Education (Parts 1—99)

SUBTITLE B—Regulations of the Offices of the Department of Education

I Office for Civil Rights, Department of Education (Parts 100—199)

II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

IV Office of Vocational and Adult Education, Department of Education (Parts 400—499)

V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)

VI Office of Postsecondary Education, Department of Education (Parts 600—699)

VII Office of Educational Research and Improvement, Department of Education (Parts 700—799)

Title 35—Panama Canal

I Panama Canal Regulations (Parts 1—299)

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1—199)

II Forest Service, Department of Agriculture (Parts 200—299)

III Corps of Engineers, Department of the Army (Parts 300—399)

IV American Battle Monuments Commission (Parts 400—499)

V Smithsonian Institution (Parts 500—599)

VII Library of Congress (Parts 700—799)

VIII Advisory Council on Historic Preservation (Parts 800—899)

IX Pennsylvania Avenue Development Corporation (Parts 900-999)

XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

XII National Archives and Records Administration (Parts 1200—1299)

Title 37—Patents, Trademarks, and Copyrights

I Patent and Trademark Office, Department of Commerce (Parts 1—199)

II Copyright Office, Library of Congress (Parts 200—299)

III Copyright Royalty Tribunal (Parts 300—399)

Title 37—Patents, Trademarks, and Copyrights—Continued

Chap.

IV Assistant Secretary for Productivity, Technology and Innovation, Department of Commerce (Parts 400-499)

V Under Secretary for Economic Affairs, Department of Commerce (500—599)

Title 38—Pensions, Bonuses, and Veterans' Relief

I Department of Veterans Affairs (Parts 0—99)

Title 39—Postal Service

I United States Postal Service (Parts 1—999)

III Postal Rate Commission (Parts 3000—3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1—799)

V Council on Environmental Quality (Parts 1500-1599)

Title 41—Public Contracts and Property Management

SUBTITLE B—Other Provisions Relating to Public Contracts

50 Public Contracts, Department of Labor (Parts 50-1—50-999)

51 Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1—51-99)

60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-999)

61 Office of the Assistant Secretary for Veterans Employment and Training, Department of Labor (Parts 61-1—61-999)

SUBTITLE C—Federal Property Management Regulations System

101 Federal Property Management Regulations (Parts 101-1—101-99)

105 General Services Administration (Parts 105-1—105-999)

109 Department of Energy Property Management Regulations (Parts 109-1—109-99)

114 Department of the Interior (Parts 114-1—114-99)

115 Environmental Protection Agency (Parts 115-1—115-99)

128 Department of Justice (Parts 128-1—128-99)

SUBTITLE D—Other Provisions Relating to Property Management (Reserved)

SUBTITLE E—Federal Information Resources Management Regulations System

201 Federal Information Resources Management Regulation (Parts 201-1—201-99)

Title 42—Public Health

Chap.

I Public Health Service, Department of Health and Human Services (Parts 1—199)

III Saint Elizabeths Hospital, Department of Health and Human Services (Parts 300—399)

IV Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

V Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

SUBTITLE A—Office of the Secretary of the Interior (Parts 1—199)

SUBTITLE B—Regulations Relating to Public Lands

I Bureau of Reclamation, Department of the Interior (Parts 200—499)

II Bureau of Land Management, Department of the Interior (Parts 1000—9999)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency (Parts 0—399)

IV Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

SUBTITLE A—Department of Health and Human Services, General Administration (Parts 1—199)

SUBTITLE B—Regulations Relating to Public Welfare

II Office of Family Assistance (Assistance Programs), Family Support Administration, Department of Health and Human Services (Parts 200—299)

III Office of Child Support Enforcement (Child Support Enforcement Program), Family Support Administration, Department of Health and Human Services (Parts 300—399)

IV Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services (Parts 400—499)

V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)

VI National Science Foundation (Parts 600—699)

VII Commission on Civil Rights (Parts 700—799)

VIII Office of Personnel Management (Parts 800—899)

X Office of Community Services, Family Support Administration, Department of Health and Human Services (Parts 1000—1099)

XI National Foundation on the Arts and the Humanities (Parts 1100—1199)

XII ACTION (Parts 1200—1299)

Title 45—Public Welfare—Continued

Chap.

XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

XVI Legal Services Corporation (Parts 1600—1699)

XVII National Commission on Libraries and Information Science (Parts 1700—1799)

XVIII Harry S. Truman Scholarship Foundation (Parts 1800—1899)

XX Commission on the Bicentennial of the United States Constitution (Parts 2000—2099)

XXI Commission on Fine Arts (Parts 2100—2199)

XXII Christopher Columbus Quincentenary Jubilee Commission (2200—2299)

Title 46—Shipping

I Coast Guard, Department of Transportation (Parts 1—199)

II Maritime Administration, Department of Transportation (Parts 200—399)

III Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400—499)

IV Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I Federal Communications Commission (Parts 0—199)

II Office of Science and Technology Policy and National Security Council (Parts 200—299)

III National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

Title 48—Federal Acquisition Regulations System

1 Federal Acquisition Regulation (Parts 1—99)

2 Department of Defense (Parts 200—299)

3 Department of Health and Human Services (Parts 300—399)

4 Department of Agriculture (Parts 400—499)

5 General Services Administration (Parts 500—599)

6 Department of State (Parts 600—699)

7 Agency for International Development (Parts 700—799)

8 Veterans Administration (Parts 800—899)

9 Department of Energy (Parts 900—999)

10 Department of the Treasury (Parts 1000—1099)

12 Department of Transportation (Parts 1200—1299)

13 Department of Commerce (Parts 1300—1399)

14 Department of the Interior (Parts 1400—1499)

15 Environmental Protection Agency (Parts 1500—1599)

16 Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

17 Office of Personnel Management (Parts 1700—1799)

Title 48—Federal Acquisition Regulations System—Continued

Chap.

18 National Aeronautics and Space Administration (Parts 1800—1899)

19 United States Information Agency (Parts 1900—1999)

22 Small Business Administration (Parts 2200—2299)

24 Department of Housing and Urban Development (Parts 2400—2499)

25 National Science Foundation (Parts 2500—2599)

28 Department of Justice (Parts 2800—2899)

29 Department of Labor (Parts 2900—2999)

34 Department of Education Acquisition Regulation (Parts 3400—3499)

44 Federal Emergency Management Agency (Parts 4400—4499)

52 Department of the Navy Aquisition Regulations (Parts 5200—5299)

53 Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399)

57 African Development Foundation (Parts 5700—5799)

61 General Services Administration Board of Contract Appeals (Parts 6100—6199)

63 Department of Transportation Board of Contract Appeals (Parts 6300-6399)

Title 49—Transportation

SUBTITLE A—Office of the Secretary of Transportation (Parts 1—99)

SUBTITLE B—Other Regulations Relating to Transportation

I Research and Special Programs Administration, Department of Transportation (Parts 100—199)

II Federal Railroad Administration, Department of Transportation (Parts 200—299)

III Federal Highway Administration, Department of Transportation (Parts 300—399)

IV Coast Guard, Department of Transportation (Parts 400—499)

V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

VI Urban Mass Transportation Administration, Department of Transportation (Parts 600—699)

VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)

VIII National Transportation Safety Board (Parts 800—899)

X Interstate Commerce Commission (Parts 1000—1399)

Title 50—Wildlife and Fisheries

I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

Title 50—Wildlife and Fisheries—Continued

Chap.

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

III International Regulatory Agencies (Fishing and Whaling) (Parts 300—399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)

V Marine Mammal Commission (Parts 500—599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

CFR Index and Finding Aids

Subject/Agency Index

List of Agency Prepared Indexes

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

List of CFR Titles, Chapters, Subchapters, and Parts

Alphabetical List of Agencies Appearing in the CFR

(Revised as of March 30, 1989)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
African Development Foundation	22, XV; 48, 57
Agency for International Development	22, II; 48, 7
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Animal and Plant Health Inspection Service	7, III; 9, I
Commodity Credit Corporation	7, XIV
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Economic Analysis Staff	7, XXXIX
Economics Management Staff	7, XL
Economic Research Service	7, XXXVII
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 4
Federal Crop Insurance Corporation	7, IV
Federal Grain Inspection Service	7, VIII
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Economic Development Service	7, XXI
Forest Service	36, II
General Sales Manager, Office of	7, XXV
Grants and Program Systems, Office of	7, XXXII
Information Resources Management, Office of	7, XXVII
Inspector General, Office of	7, XXVI
International Cooperation and Development Office	7, XXII
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
Operations and Finance, Office of	7, XXX
Packers and Stockyards Administration	9, II
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Secretary of Agriculture, Office of	7, Subtitle A
Soil Conservation Service	7, VI
Transportation, Office of	7, XXXIII
World Agriculture Outlook Board	7, XXXVIII
Air Force Department	32, VII
Federal Acquisition Regulation Supplement	48, 53

Agency	CFR Title, Subtitle or Chapter
Alaska Natural Gas Transportation System, Office of the Federal Inspector	10, XV
Alcohol, Tobacco and Firearms, Bureau of	27, I
AMTRAK	49, VII
American Battle Monuments Commission	36, IV
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI
Arms Control and Disarmament Agency, U.S.	22, VI
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Benefits Review Board	20, VII
Bicentennial of the United States Constitution, Commission on the	45, XX
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind and Other Severely Handicapped, Committee for Purchase from	41, 51
Board for International Broadcasting	22, XIII
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Christopher Columbus Quincentenary Jubilee Commission	45, XXII
Civil Rights Commission	45, VII
Civil Rights, Office for (Education Department)	34, I
Claims Collection Standards, Federal	4, II
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	44, IV
Census Bureau	15, I
Economic Affairs, Assistant Secretary	37, V
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Endangered Species Committee	50, IV
Export Administration Bureau	15, VII
Federal Acquisition Regulation	48, 13
Fishery Conservation and Management	50, VI
International Trade Administration	15, III; 19, III
National Bureau of Standards	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII; 47, III
Patent and Trademark Office	37, I
Productivity, Technology and Innovation, Assistant Secretary for	37, IV
Secretary of Commerce, Office of	15, Subtitle A
United States Travel Service	15, XII
Commercial Space Transportation, Office of, Department of Transportation	14, III
Commission on the Bicentennial of the United States Constitution	45, XX
Committee for Purchase from the Blind and Other Severely Handicapped	41, 51
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16, II
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV

Agency	CFR Title, Subtitle or Chapter
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Council on Environmental Quality	40, V
Customs Service, United States	19, I
Defense Department	32, Subtitle A
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 2
Navy Department	32, VI; 48, 52
Secretary of Defense, Office of	32, I
Defense Logistics Agency	32, XII
Delaware River Basin Commission	18, III
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Affairs, Assistant Secretary (Commerce)	37, V
Economic Analysis, Bureau of	15, VIII
Economic Analysis Staff, Department of Agriculture	7, XXXIX
Economic Development Administration	13, III
Economics Management Staff	7, XL
Economic Research Service	7, XXXVII
Education, Department of	
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Acquisition Regulation	48, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	10, II, III, X; 41, 109
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	18, I
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 115; 48, 15
Environmental Quality, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export Administration Bureau	15, VII
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Family Support Administration	45, II, III, IV, X
Farm Credit Administration	12, VI
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 1
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I
Federal Contract Compliance Programs, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	44, I; 48, 44

Agency	CFR Title, Subtitle or Chapter
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Bank Board	12, V
Federal Home Loan Mortgage Corporation	1, IV
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries	28, III
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Retirement Thrift Investment Board	5, VI
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	16, I
Fine Arts Commission	45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	
Contract Appeals Board	48, 61
Federal Acquisition Regulation	48, 5
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Property Management Regulations System	41, 101, 105
Geological Survey	30, IV
Government National Mortgage Association	24, III
Grants and Program Systems, Office of	7, XXXII
Great Lakes Pilotage	46, III
Harry S. Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Family Support Administration	45, II, III, IV, X
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Health Care Financing Administration	42, IV
Human Development Services Office	45, XIII
Inspector General, Office of	42, V

Agency	CFR Title, Subtitle or Chapter
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
St. Elizabeths Hospital	42, III
Social Security Administration	20, III; 45, IV
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Inspector General, Office of	24, XII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle A, VII
Solar Energy and Energy Conservation Bank	24, XI
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Information Agency, United States	22, V; 48, 19
Information Resources Management, Office of, Agriculture Department	7, XXVII
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inspector General, Office of, Health and Human Services Department	42, V
Inspector General, Office of, Housing and Urban Development Department	24, XII
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Minerals Management Service	30, II
Mines, Bureau of	30, VI
Natiopal Park Service	36, I
Reclamation Bureau	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
United States Fish and Wildlife Service	50, I, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Cooperation and Development Office, Department of Agriculture	7, XXII
International Development, Agency for	22, II
International Development Cooperation Agency	22, XII
International Development, Agency for	22, II
Overseas Private Investment Corporation	22, VII
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III

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Agency	CFR Title, Subtitle or Chapter
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Japan-United States Friendship Commission	22, XVI
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Acquisition Regulation	48, 28
Federal Claims Collection Standards	4, II
Federal Prison Industries	28, III
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Offices of Independent Counsel	28, VI
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefits Administration	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Veterans Employment and Training, Office of the Assistant Secretary for	41, 61
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Minerals Management Service	30, II
Mines, Bureau of	30, VI
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 48, 18
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National Archives and Records Administration	36, XII
National Bureau of Standards	15, II
National Capital Planning Commission	1, IV
National Commission for Employment Policy	1, IV
National Commission on Libraries and Information Science	45, XVII
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI

Agency	CFR Title, Subtitle or Chapter
National Highway Traffic Safety Administration	23, II, III; 49, V
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	45, VI; 48,25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII; 47, III
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI; 48, 52
Neighborhood Reinvestment Corporation	24, XXV
Nuclear Regulatory Commission	10, I
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Office of Independent Counsel	28, VII
Offices of Independent Counsel, Department of Justice	28, VI
Overseas Private Investment Corporation	22, VII
Packers and Stockyards Administration	9, II
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension and Welfare Benefits Administration, Department of Labor	29, XXV
Pension Benefit Guaranty Corporation	29, XXVI
Personnel Management, Office of	5, I; 45, VIII; 48, 17
Federal Employees Health Benefits Acquisition Regulation	48, 16
Postal Rate Commission	39, III
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Productivity, Technology and Innovation, Assistant Secretary (Commerce)	37, IV
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II
Reclamation Bureau	43, I
Refugee Resettlement, Office of	45, IV
Regional Action Planning Commissions	13, V
Research and Special Programs Administration	49, I
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Elizabeths Hospital	42, III
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I; 48, 22
Smithsonian Institution	36, V
Social Security Administration	20, III; 45, IV
Soil Conservation Service	7, VI

Agency	CFR Title, Subtitle or Chapter
Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development	24, XI
Soldiers' and Airmen's Home, United States	5, XI
Special Education and Rehabilitative Services, Office of	34, III
State Department	22, I
Federal Acquisition Regulation	48, 6
Surface Mining and Reclamation Appeals, Board of	30,III
Susquehanna River Basin Commission	18, VIII
Tennessee Valley Authority	18, XIII
Trade Representative, United States, Office of	15, XX
Transportation, Department of	44, IV
Coast Guard	33, I; 46, I, III; 49, IV
Commercial Space Transportation, Office of	14, III
Contract Appeals Board	48, 63
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Railroad Administration	49, II
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 49, V
Research and Special Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Urban Mass Transportation Administration	49, VI
Transportation, Office of, Department of Agriculture	7, XXXIII
Travel Service, United States	15, XII
Treasury Department	17, IV
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Law Enforcement Training Center	31, VII
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
United States Customs Service	19, I
Truman, Harry S. Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States Information Agency	22, V; 48, 19
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Postal Service	39, I
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Affairs Department	38, I; 48, 8
Veterans Employment and Training, Office of the Assistant Secretary for	41, 61
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Workers' Compensation Programs, Office of	20, I
World Agriculture Outlook Board	7, XXXVIII

Redesignation Table

At 44 FR 30682, May 29, 1979, Chapter II—Tennessee Valley Authority consisting of Parts 300, 301, 302, 303, 304, 305, 306 and 308 were redesignated as Chapter XIII—Tennessee Valley Authority, Parts 1300, 1301, 1302, 1303, 1304, 1305, 1306 and 1308.

For the convenience of the user, the following table shows the relationship of the regulations in former Chapter II to the redesignated parts in the new Chapter XIII.

Old Part	New Part
300	1300
301	1301
302	1302
303	1303
304	1304
305	1305
306	1306
308	1308

Transferred Regulations—Tennessee Valley Authority
List of CFR Sections Affected

At 44 FR 30682, May 29, 1979, Chapter II—Tennessee Valley Authority consisting of Parts 300, 301, 302, 303, 304, 305, 306 and 308 were redesignated as Chapter XIII—Tennessee Valley Authority, Parts 1300, 1301, 1302, 1303, 1304, 1305, 1306 and 1308. All changes in former Chapter II which were made by documents published in the FEDERAL REGISTER from January 1, 1973, through May 29, 1979, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963, and 1964-1972," published in three separate volumes.

1973

18 CFR

	38 FR Page
Chapter II	
300.735-41 Appendix revised	15075
302.3 (b) (3) and (4) redesignated as (b) (4) and (5); new (b) (3) and (6) added	17944
302.4 (b) revised	17944
302.7 (d) revised	17945
302.8 (d)(1) revised	17945
302.9 (g) added	17945
302.11 Revised	17945
302 Appendix A heading revised	17945
305 Added	5458
306 Added	3592

1974

(No regulations published)

1975

18 CFR

	40 FR Page
Chapter II	
301.1 Revised	7326
(a) corrected	10668
301.2 Added	14749
301.11—301.24 (Subpart B) Added	45313

1976

(No regulations published)

1977

18 CFR

	42 FR Page
Chapter II	
300.735-41 Appendix revised	2668, 65143
301.41—301.48 (Subpart C) Added	14087
301.43 Revised	21470
304.1 Revised	65146
304.2 Revised	65146
304.3 (b) revised; (c) added	65147
304.4 Revised	65147
304.5 Revised	65147
304.100 Revised	65147
304.101 Revised	65147
304.102 Revised	65147
304.103 Revised	65147
304.105 Revised	65148
304.106 (a) and (b) revised	65148
304.108 (b) and (c) revised	65148
304.109 Revised	65148
304.200—304.206 (Subpart C) Heading revised	65148
304.200 Revised	65148
304.201 Revised	65148
304.203 Revised	65149
304.204 Revised	65149
304.205 (b), (c), (d), and (e) revised	65149
304.206 (a) revised	65149

1978

18 CFR	43 FR Page
Chapter II	
304.108 (c) corrected	6766
304.201 Corrected	6766
304.203 (c)(2) corrected	6766

1979

18 CFR	44 FR Page
Chapter II	
Chapter II redesignated as Chapter XIII	30682
300 Redesignated as 1300	30682
301 Redesignated as 1301	30682
302 Redesignated as 1302	30682
303 Redesignated as 1303	30682
304 Redesignated as 1304	30682
304.1 Amended	23066
304.101 Revised	23066
304.102 Revised	23066
304.103 (c) introductory text revised	23066
304.105 (a) revised	23066
305 Redesignated as 1305	30682
306 Redesignated as 1306	30682
308 Added	29648
Redesignated as 1308	30682

18 CFR—Continued

Chapter II—Continued	44 FR Page

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963, and 1964-1972," published in three separate volumes.

1973

18 CFR

38 FR Page

Chapter III
401 Revised 10259
Chapter VIII
801 Added 4662
801.7 Corrected 6386

1974

18 CFR

39 FR Page

Chapter III
401 Revised 25474
401.71—401.89 Correctly designated as 401.91—401.109 (Subpart G) 17987
401.91—401.94 (Subpart G) Redesignated from 401.71—401.74 (Subpart F) and revised 14056
Correctly redesignated as 401.111—401.114 (Subpart H) 17987
401.111—401.114 (Subpart H) redesignated from 401.91—401.94 (Subpart G) 17987
Chapter VI
701 Revised 20590
701.78 (a)(13) added 41521
701.200—701.204 (Subpart D) added 40762
703.3 (b), (c) and (d) revised 31897
703.5 (h) revised 31897
(n) revised 41521
705 Added 41521

18 CFR—Continued

39 FR Page

Chapter VIII
803 Added 41973

1975

18 CFR

40 FR Page

Chapter III
401.71—401.89 (Subpart F) Added 14056
Correctly designated as 401.9—401.109 (Subpart G) 17987
401.81—401.87 (Subpart F) Effective status confirmed 17987
401.91—401.109 (Subpart G) Correctly designated from 401.71—401.89 (Subpart F) and amended 17987
401.91—401.94 (Subpart G) Correctly redesignated as 401.111—401.114 (Subpart H) 17987
401.111—401.114 (Subpart H) Correctly redesignated from 410.91—401.94 (Subpart G) 17987
Chapter VI
701.200—701.209 (Subpart D) revised 7253
701.209 (c)(2) corrected 10668
701.300—701.313 (Subpart E) Added 45676
706 Added 32818

1976

18 CFR	41 FR Page
Chapter VI	
701.2 Revised	20548
701.5 (b) revised	20548
701.52 (a) revised	20548
701.53 Introductory text amended; (b) revised	20548
701.54 (e) revised	20548
701.56 (a) revised	54926
701.78 (a)(5) revised	20548
701.202 (a) revised; (c) added	8343
701.304 Revised	8343
701.305 Revised	8343
701.306 (a) amended	8343
701.308 (a) amended; (e) added	8343
701.309 (d)(3) added	8344
701.311—701.313 Redesignated as 701.312—701.314; new 701.311 added	8344
701.312—701.314 Redesignated from 701.311—701.313; new 701.311 added	8344
Chapter VIII	
803.3 (a)(2) revised	43135
803.4 (a)(2) revised	43135
803.60—803.61 (Subpart D) Added	43135

1977

18 CFR	42 FR Page
Chapter III	
401.35 (b)(14) and (15), (d), and (e) added	15311
401.41 (b) revised; (c) redesignated as (d); new (c) added	15311
401.46 Removed	15311
401.86 Redesignated as 401.87; new 401.86	15310
401.87 Redesignated as 401.88; new 401.87 redesignated from 401.86	15310
401.88 Redesignated from 401.87	15310
415 Added	13541
420 Added; eff. 5-22-74	13545
Chapter X	
Chapter established	21104
1000 Redesignated from 295 and revised	21104
1000.1 (a)(10), (11) and (12) added	22146
1000.7 (b) added	34499
1000.9 Added	22146

1978

18 CFR	43 FR Page
Chapter III	
401.35 (a) introductory text and (15) revised	38816
410.1 Revised	27784
420.41 (a) and (b) revised; eff. Apr. 79	56655
Chapter VI	
701.1—701.6 (Subpart A) Revised	25944
701.51—701.79 (Subpart B) Revised	25945
Chapter VIII	
803.62 Added	34127

1979

18 CFR	44 FR Page
Chapter VI	
701 Authority citation revised	72584
701.60 Added	72584
707 Added	69922
708 Added	14537
713 Added	72912
Chapter VIII	
803.63 Added	8868
Technical correction	13473
Chapter X	
Chapter X removed	36028
1000 Removed	36028
Chapter XIII	
Chapter XIII redesignated from Chapter II	30682
1300 Redesignated from 300	30682
1301 Redesignated from 301	30682
1302 Redesignated from 302	30682
1303 Redesignated from 303	30682
1304 Redesignated from 304	30682
1305 Redesignated from 305	30682
1306 Redesignated from 306	30682
1308 Redesignated from 308	30682

1980

18 CFR	45 FR Page
Chapter III	
410.1 Incorporation by reference amendments	22893
Chapter VI	
701.53 (b) revised	24460
701.54 (e) revised	58834

18 CFR—Continued

Chapter VI—Continued — 45 FR Page

703 Removed....72010
711 Added....64388
711.20 (b) corrected....73033
711.61 (a)(1) and (b)(3) corrected....73033
711.62 (a)(1) and (b)(3)(i) corrected....73033
711.64 (a)(1) corrected....73033
713.3 (b) redesignated as (b)(1); (b)(2) added....64451
713.313 Table revised....24865
713.409 (c) corrected....24864
713.801—713.811 (Subpart J) Added....64451
713.811 Table 713.811-2 revised....73034
713.1001—713.1021 (Subpart L) Added....64461
713.1011 (b) and (c) corrected....73034
713.1017 (a) corrected....73034
713.1203 (b) revised....24864
713.2009 (h)(1) amended....24864
714 Added....64414
714.200 Corrected....73034
714.411 (c)(1)(iv) corrected....73034
714.441 Figure 714.441-3 revised....73034
714 Appendix A corrected....73034
716 Added....64464
716.303 (e) corrected....73034
716.309 Correctly designated....73034
725 Added....76683
740 Added....72010

Chapter XIII

1307 Added....22895

1981

18 CFR

46 FR Page

Chapter III

401.35 Suspended in part....26638
401.38 Redesignated as 401.39; new 401.38 added....25439
401.39 Redesignated as 401.40; new 401.39 redesignated from 401.38....25439
401.40 Redesignated as 401.41; new 401.40 redesignated from 401.39....25439
401.41 Redesignated as 401.42; new 401.41 redesignated from 401.40....25439
Suspended in part....26638

18 CFR—Continued

Chapter III—Continued — 46 FR Page

401.42 Redesignated as 401.43; new 401.42 redesignated from 401.41....25439
401.43 Redesignated as 401.44; new 401.43 redesignated from 401.42....25439
401.44 Redesignated as 401.45; new 401.44 redesignated from 401.43....25439
401.45 Redesignated as 401.46; new 401.45 redesignated from 401.44....25439
401.46 Redesignated from 401.45....25439
401.51—401.67 (Subpart D) Suspended in part....26638
401—420 (Subchapter A) Heading added....24
410.1 Incorporation by reference approvals....19660
430 (Subchapter B and part) Added....24

Chapter XIII

1300.735-41 Appendix revised....35499
1301.2 Revised....31002
1309 Added....30811

1982

18 CFR

47 FR Page

Chapter III

410.1 Heading and (a) revised....8343
Correctly designated....9206
430.24 Added....21776

1983

18 CFR

48 FR Page

Chapter III

410 Correctly revised....33256, 34946

Chapter VI

711 Removed; eff. 7-8-83....10258
713 Removed; eff. 7-8-83....10258
714 Removed; eff. 7-8-83....10258
716 Removed; eff. 7-8-83....10258

Chapter XIII

1300 Authority citation....41380
1300.735-21 Added....41380
1300.735-22 Added....41380
1300.735-23 Added....41380
1300.735-37 Added....41380
1300.735-38 Added....41380
1300.735-39 Added....41381

18 CFR—Continued

Chapter XIII—Continued	48 FR Page
1300.735-41 Appendix revised	16653, 54001
1304.203 Appendix—interpretation added	9639
1304.204 Appendix—interpretation added	9639
1310 Added	16657
1311 Added	29399

1984

18 CFR

Chapter XIII	49 FR Page
1302 Authority citation	20481
1302.2 (d) revised	20481
1302.3 Redesignated as 1302.4 and (a) and (b)(1) introductory text, (iii), (v), and (vi) revised	20481
Correctly added; (a) through (d) corrected	20481, 47383
1302.4 Redesignated as 1302.5 and (a) amended; new 1302.4 redesignated from 1302.3 and (a) and (b)(1) introductory text, (iii), (v), and (vi) revised	20481
1302.5 Redesignated as 1302.6; new 1302.5 redesignated from 1302.4 and (a) amended	20481
1302.6 Redesignated as 1302.7 and revised; new 1302.6 redesignated from 1302.5 (OMB no. pending)	20481
1302.7 Redesignated as 1302.8 and (a) and (b) amended	20483
Redesignated from 1302.6 and revised (OMB no. pending)	20481
(b)(3)(iii) and (4)(iii) and (c)(4) corrected; (b)(4)(iv) and (5), (6), and (7) correctly redesignated as (b)(5), (6), (7), and (8); new (b)(5) revised	47383
1302.8 Redesignated as 1302.9; new 1302.8 redesignated from 1302.7 and (a) and (b) amended	20483
(b) corrected	47384
1302.9 Redesignated as 1302.10 and (a) and (g) revised; new 1302.9 redesignated from 1302.8	20483
1302.10 Redesignated from 1302.9 and (a) and (g) revised	20483

18 CFR—Continued

Chapter XIII—Continued	49 FR Page
Correctly redesignated as 1302.11	47384
1302.11 Redesignated as 1302.12 and (a)(1) revised	20484
Correctly redesignated from 1302.10	47384
1302.12 Redesignated from 1302.11 and (a)(1) revised	20484
1308.32 (a) revised; (e) added	3845
1308.33 (c) revised	3845
1312 Added	1028
1312.3 (a)(3)(iii) and (c)(2) corrected	5923
1312.8 (a)(1)(i) correctly designated; (a)(4) and (b) corrected	5923
1312.10 (b) corrected	5923
1312.18 Heading corrected	5923

1985

18 CFR

Chapter III	50 FR Page
410 Standard amended	25414
410.1 Water code and water quality standards amended	5972
430.13 (e) redesignated as (g); new (e) and (f) added	5973
Chapter IV	
Chapter IV Removed	23114
501 Removed	23114
502 Removed	23114
503 Removed	23114
504 Removed	23114
505 Removed	23114
506 Removed	23114
507 Removed	23114
508 Removed	23114
Chapter VIII	
803.26 Added	12241

1986

18 CFR

Chapter III	51 FR Page
410 Revised	20960
Water Code amended	25031, 28810
430.19 Redesignated as 430.21; new 430.19 added	25031
430.21 Redesignated as 430.23; new 430.21 redesignated from 430.19	25031

18 CFR—Continued

51 FR Page

Chapter III—Continued

430.23 Redesignated as 430.25; new 430.23 redesignated from 430.21 25031
430.24 Redesignated as 430.27 25031
430.25 Redesignated as 430.29; new 430.25 redesignated from 430.23 25031
430.27 Redesignated as 430.31; new 430.27 redesignated from 430.24 25031
430.29 Redesignated as 430.33; new 430.29 redesignated from 430.25 25031
430.31 Redesignated as 430.35; new 430.31 redesignated from 430.27 25031
430.33 Redesignated from 430.29 25031
430.35 Redesignated from 430.31 25031

Chapter XIII

1302.6 OMB number 9649
1302.7 OMB number 9649
1313 Added 22889, 22896
1313.170 (c) revised 22890

1987

18 CFR

52 FR Page

Chapter III

401 Authority citation revised 37602
401.91—401.109 (Subpart G) Redesignated as 401.101—401.119 (Subpart H) 37602
401.91—401.99 (Subpart G) Added 37602
401.101—401.119 (Subpart H) Redesignated from 401.91—401.109 (Subpart G) 37602
401.111—401.114 (Subpart H) Redesignated as 401.121—401.124 (Subpart I) 37602
401.121—401.124 (Subpart I) Redesignated from 401.111—401.114 (Subpart H) 37602
410 Water Code amended 16239
Water Code corrected 17888

Chapter XIII

1301.1—1301.4 (Subpart A) Subpart authority citation added 17939
1301.2 Revised 17939
1301.24 (d) added 7408
1306 Authority citation revised 48019

18 CFR—Continued

52 FR Page

Chapter XIII—Continued

1306.1 Revised; interim 48019
(b) revised; interim; eff. 4-2-89 48019
1306.2 Removed; new 1306.2 redesignated from 1306.18; interim; eff. 4-2-89 48019
1306.3 Removed; new 1306.3 redesignated from 1306.19; interim; eff. 4-2-89 48019
1306.4 Removed; new 1306.4 redesignated from 1306.20; interim; eff. 4-2-89 48019
1306.5 Removed; new 1306.5 redesignated from 1306.21; interim; eff. 4-2-89 48019
1306.6 Removed; new 1306.6 redesignated from 1306.22; interim; eff. 4-2-89 48019
1306.7 Removed; interim; eff. 4-2-89 48019
1306.8 Removed; interim; eff. 4-2-89 48019
1306.9 Removed; interim; eff. 4-2-89 48019
1306.10 Removed; interim; eff. 4-2-89 48019
1306.11 Removed; interim; eff. 4-2-89 48019
1306.12 Removed; interim; eff. 4-2-89 48019
1306.13 Removed; interim; eff. 4-2-89 48019
1306.14 Removed; interim; eff. 4-2-89 48019
1306.15 Removed; interim; eff. 4-2-89 48019
1306.16 Removed; interim; eff. 4-2-89 48019
1306.17 Removed; interim; eff. 4-2-89 48019
1306.18 Redesignated as 1306.2; interim; eff. 4-2-89 48019
1306.19 Redesignated as 1306.3; interim; eff. 4-2-89 48019
1306.20 Redesignated as 1306.4; interim; eff. 4-2-89 48019
1306.21 Redesignated as 1306.5; interim; eff. 4-2-89 48019
1306.22 Redesignated as 1306.6; interim; eff. 4-2-89 48019
1306.23 Removed; interim; eff. 4-2-89 48019
1310 Authority citation revised 25592
1310.2 (c) added 25592

18 CFR—Continued

52 FR Page

Chapter XIII—Continued
1310.3 (d) redesignated as (e); new (d) added 25592
1312.16 (a)(1) and (2) revised 47721

1988

18 CFR

53 FR Page

Chapter I
381.401 Amended 15384
381.402 Revised 15382
381.403 Amended 15384
381.404 Amended 15384
381.405 Removed 15382
381.502 Revised 15382
381.503 Removed 15382
381.504 Removed 15382
381.505 Revised 15382
381.506 Amended 15384
381.507 Amended 15384
381.508 Amended 15384
381.509 Amended 15384
381.510 Amended 15384
381.601 (Subpart F) Added 15383
382 Clarification 46445
385 Authority citation revised 15032, 16408, 32039
Programs availability 30047
Record formats revised 35312, 44004
Software availability 45758
Rehearing denied 50943
385.501 Revised 16067
385.502 (a)(2) revised 16067
385.913 Revised 16408
385.1501—385.1511 (Subpart O) Added 32039
385.2011 Added 15032
Rehearing granted and effective date suspended 16058
Eff. 8-1-88 19283
Implementation conference 32891
385.2012 Added 37546
Rehearing denied 47949
388 Authority citation revised 15032
Programs availability 30047
Record formats revised 35312, 44004
Software availability 45758
388.104 Revised 15383
388.112 (b) revised 15032
Rehearing granted and effective date suspended 16058
Eff. 8-1-88 19283
Implementation conference 32891
389 Filing time extended 36273
389.101 (b) table OMB numbers confirmed 12676

18 CFR—Continued

53 FR Page

Chapter I—Continued
(b) table amended (OMB numbers) 12677, 31701

Chapter III
410 Water Code amended 1751
420.51 Undesignated center heading and section added 45260

Chapter XIII
1300 Authority citation revised 40217
1300.735-12 (b) revised 40217
1300.735-14 (c) added 40217
1300.735-41b Amended 40218
1300.735-43 Amended 40218
1300.735-49 Amended 40218
1301 Authority citation removed 40218
1301.1—1301.2 (Subpart A) Authority citation revised 40218
1301.1 (a)(7) revised; (b) introductory text, (c)(1) (i), (ii), (2)(ii), (3) (i) and (ii), and (e) amended 405
1301.1 (b) introductory text, (c)(1) (i) and (ii), (2) (i) and (ii), and (3) (i) and (ii), and (e) amended 31316
1301.4 Removed 40218
1301.11—1301.24 (Subpart B) Authority citation revised 40218
1301.12 (d) and (f) revised 30252
1301.14 (g) amended 30253
1301.17 (d) removed; (e) redesignated as (d) 30253
1301.19 (a) introductory text amended 30253
1301.23 (b) amended 30253
1301.24 (a) amended; (b)(1) and (c)(1) revised 30253
1301.41—1301.48 (Subpart C) Authority citation revised 40218
1307.6 (d) revised 39083
1310.2 (c) amended 2827
1310.3 (d) amended 2827

1989

(Regulations published from January 1, 1989 through March 31, 1989)

18 CFR

54 FR Page

Chapter III
410 Water code amended 9199

18 CFR—Continued

54 FR
Page

Chapter XIII

1306 Regulations at 52 FR 48019 confirmed; see regulation codified at 49 CFR Part 24 8912

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